



**mainroads**  
WESTERN AUSTRALIA

# MINOR WORKS

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## GENERAL CONDITIONS OF CONTRACT

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## GENERAL CONDITIONS OF CONTRACT

### GCC 1 DEFINITIONS AND INTERPRETATION

- (a) In the Contract, except where the context otherwise requires:

**Acceptance Letter** means the letter or notice of acceptance of tender or similar which engages the Contractor under the Contract.

**Business Day** means a day other than:

- (i) a Saturday, Sunday or a public holiday in Perth, Western Australia; or
- (ii) any other day that falls between 22 December in any year and 10 January in the following year (inclusive).

**Certificate of Practical Completion** means a certificate issued pursuant to GCC 15 stating the Date of Practical Completion, unless Annexure A or a Work Order specifies that a Certificate of Practical Completion does not apply, in which case the final payment (except for retention amounts that may apply) will be deemed to be the Certificate of Practical Completion for the Contract or that Work Order (as applicable).

**Construction Program** means the detailed construction program, meeting the requirements of GCC 8, approved by the Superintendent from time to time.

**Contract** means this contract, consisting of:

- (i) if GCC 35 (Work Orders) applies, for each Work Order that is issued, the Work Order including any correspondence from the Contractor or the Principal that is specifically referred to in the Work Order (excluding the Price Schedule relating to the Work Order (if any));
- (ii) the Acceptance Letter, including any agreed qualifications as demonstrated between the Principal and the Contractor prior to acceptance;
- (iii) Special Conditions of Contract (if any);
- (iv) these General Conditions of Contract (GCCs), including Annexure A to the Minor Works General Conditions of Contract;
- (v) the Specifications;
- (vi) the Drawings;
- (vii) Main Roads' Standard Method of Measurement for Construction Works;
- (viii) the Price Schedule, including the Preambles, and if GCC 35 (Work Orders) applies, any Price Schedule issued for the Work Order; and
- (ix) the relevant Tender Schedules (excluding the Price Schedule), including (if GCC 35 (Work Orders) applies) the Tender submission for the Work Order (if any), and all correspondence concerning the Tender.

**Contract Sum** means the price payable by the Principal for the Works, being:

- (i) the price described in the Price Schedule of the Contract; or
- (ii) if Work Orders apply and "Contract Sum" is used in the context of a Work Order, the price described in the Work Order,

as adjusted in accordance with this Contract, but excluding any provisional sum.

**Contractor** means the person or persons, firm or company which has been accepted by the Principal as a Contractor under the Contract and includes the Contractor's personal representatives, successors and permitted assigns.

**Contractor's Representative** means a person appointed by the Contractor and notified to the Superintendent for approval under GCC 11.3.

**Date for Practical Completion** means:

- (i) in respect of a Work Order, the date or the last day of the period (as applicable) specified in the Work Order; or
- (ii) the last day of the period specified in Annexure A,

being the date for achieving Practical Completion, as amended under this Contract.

**Date of Practical Completion** means the date specified in the Certificate of Practical Completion as the date upon which Practical Completion has been achieved.

**Defects Liability Period** means the period specified in the Work Order (if applicable) or otherwise in Annexure A, which commences on the Date of Practical Completion.

**Dispute** has the meaning given in GCC 23.1(a).

**Dispute Notice** has the meaning given in GCC 23.1(b).

**Final Certificate** means a certificate issued pursuant to GCC 15 advising the Defect Liability Period has expired and the Contractor has complied with GCC 15(b).

**Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**GST** has the meaning to that term in the GST Law.

**GST Law** has the meaning given to "GST law" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property** means any patent, registered design, trademark or name, copyright or other protected right and includes any application or right to apply for registration of any of those rights.

**Legislative Requirements** means:

- (i) all applicable present and future acts, ordinances, regulations, by-laws, orders, awards and proclamations of the State of Western Australia, the Commonwealth of Australia or a local authority; and
- (ii) any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, waiver, approval, authority or exemption from, by or with a Government Agency required under a law or requirement in paragraph (i) above, and includes any renewal of, or variation to, any of them but does not include any act or omission by the Principal under this Contract.

**Practical Completion** means the stage of the Works when:

- (i) the Works are complete except for minor omissions and minor defects:
  - (A) which do not prevent the Works from being reasonably capable of being used for their intended purpose;
  - (B) which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying; and

- (C) rectification of which will not prejudice the convenient use of the Works;
- (ii) those tests required under this Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed; and
- (iii) if applicable, documents and other information required under the Contract which are essential for the use, operation and maintenance of the Works have been supplied.

**Principal** means the person stated in the Form of Tender and, so far as concerns the functions exercisable by the Principal's Representative, includes a Principal's Representative.

**Principal's Representative** means a person appointed by the Principal under GCC 11.

**Specifications** means the Works Specifications and Appendices included with the request for tender issued by the Principal for the Contract, as varied in accordance with this Contract.

**SOP Act** means the *Building and Construction Industry (Security of Payment) Act 2021* (WA).

**SOP Legislation** means the SOP Act and its accompanying regulations.

**Superintendent** means the Superintendent appointed from time to time by the Principal and notified in writing to the Contractor to act as Superintendent for the purpose of the Contract.

**Superintendent's Representative** means a person appointed by the Superintendent under GCC 11.2.

**Tender** means:

- (i) the tender submitted by the Contractor in response to the request for tender issued by the Principal for the Contract; or
- (ii) if Work Orders apply and "Tender" is used in the context of a Work Package or Work Order, the tender submitted by the Contractor in response to a Work Package.

**WHS** means all work, health and safety.

**WHS Act** means the *Work Health and Safety Act 2020* (WA) and regulations made under that Act.

**WHS Law** means all statutory requirements, including the WHS Act, and mandatory codes of practice or guidelines, relating to WHS that are applicable to the work under the Contract or the site.

**Work Order** means, if GCC 35 (Work Orders) applies, an order to perform a Work Package in accordance with the Contract, setting out the details prescribed in Annexure B.

**Work Package** means, if GCC 35 (Work Orders) applies:

- (i) the package of works described in a request for tender issued by the Superintendent which, if accepted by the Superintendent, forms part of a Work Order; or
- (ii) if a Work Order is issued by the Superintendent without a request for tender, the package of Works described in the Work Order,

which may include:

- (iii) a statement of the Work Package's proposed scope of work, together with any constraints or requirements in carrying out the Works;
- (iv) the proposed timeframe for completing the Work Package;

- (v) the specifications, drawings and/or standards that apply if different or additional to those required under the Contract;
- (vi) the preferred payment model for the Work Package (for example, Schedule of Rates) and a detailed schedule of rates/prices to be completed for the Tender;
- (vii) other matters for the purposes of completing the intended Work Order; and
- (viii) the closing time by which a Tender is to be submitted.

**Works** means:

- (i) the works to be executed in accordance with the Contract; or
- (ii) if used in the context of a Work Order, the works required in the Work Order and associated Work Package to be executed in accordance with the Contract,

including, in each case, any variations under the Contract and all ancillary work not expressly specified but which is necessary for the satisfactory completion of the obligations of the Contractor under the Contract.

- (b) Words in the singular include the plural and vice versa where the context requires. Words importing a gender include every gender. The words “include”, “includes” or “including” and other words introducing one or more examples of a thing are not to be construed as words of limitation.
- (c) The documents forming the Contract must be read collectively to ascertain the Contract requirements. If there is any ambiguity or inconsistency between the documents comprising the Contract, those documents will have the order of precedence listed in the order of precedence in the definition of “Contract” in paragraph (a) above.
- (d) These General Conditions of Contract must not be varied or waived, except through a notice from the Principal, as set out in GCC 36.
- (e) If the Contractor identifies an ambiguity, discrepancy or inconsistency within this Contract, then prior to taking any action, the Contractor must notify the Superintendent and the Superintendent must apply the order of precedence or, if that does not resolve the issue, direct the Contractor as to the resolution. If the direction causes the Contractor to incur more or less costs, the Superintendent may give a Variation direction under GCC 13.

## **GCC 2 GENERAL OBLIGATIONS**

- (a) The Contractor must execute the Works in accordance with the Contract to the satisfaction of the Superintendent and is solely liable for the care of the Works, temporary works, materials and constructional plant until the Superintendent issues a Certificate of Practical Completion. After issue of the Certificate of Practical Completion, the Contractor is solely liable for the care of outstanding work and items to be removed from site until completion of the outstanding work or removal of the item. If loss or damage occurs to the Works during the period of the Contractor’s care, the Contractor, at its cost, must rectify such loss or damage.
- (b) The Contractor must provide all materials, labour, constructional plant, equipment, tools and everything whether of a temporary or a permanent nature required for the execution of the Works except where otherwise stated in the Contract.

## **GCC 3 WORK, HEALTH AND SAFETY**

### **3.1 General Requirements**

- (a) The Principal is committed to ensuring, so far as is practicable, a working environment for all workers and members of the public, that is safe and without risk to health.
- (b) The Contractor must at all times discharge its responsibilities under WHS Law, including identifying and exercising all necessary precautions for the safety and health of all persons including:
  - (i) the Contractor's employees;
  - (ii) any subcontractor and their employees;
  - (iii) the Superintendent and the Superintendent's staff and agents;
  - (iv) the Principal's employees, agents, contractors and subcontractors; and
  - (v) any other person,who may be affected directly or indirectly by or as a result of any work under the Contract.

### **3.2 Compliance with WHS Law**

- (a) In this GCC 3.2, "construction project", "construction work", "principal contractor", "worker" and "workplace" have the same meanings assigned to those terms in the WHS Act.
- (b) For the purposes of the WHS Act and to the extent the work under the Contract involves construction work or is a construction project:
  - (i) the Principal engages the Contractor as the principal contractor and the Contractor accepts its appointment and engagement as the principal contractor and must comply with all obligations and duties of a principal contractor;
  - (ii) the Principal authorises the Contractor to have management and control of each workplace (including the means of entering and exiting the workplace) at which the work under the Contract is carried out and to discharge the duties of principal contractor, which the Contractor is performing the work under the Contract; and
  - (iii) in the event that the appointment and engagement of the Contractor as principal contractor is not valid under the WHS Law, the Contractor must nevertheless perform the function of a principal contractor in accordance with the requirements of the WHS Act.

### **3.3 Breach**

- (a) The following are substantial breaches of the Contract for the purposes of GCC 20.1(b):
  - (i) the Contractor fails to comply with the provisions of GCC 3;
  - (ii) the Contractor fails to comply with the Health and Safety Management Plan as approved by the Superintendent; and
  - (iii) a conviction in relation to WHS is imposed on the Contractor.

### **3.4 Consultation**

The Contractor agrees to consult, co-operate and co-ordinate activities with the Principal and every other person having a WHS duty under WHS Law in relation to the work under the Contract.



## **GCC 4 DAMAGE TO PERSONS AND PROPERTY OTHER THAN THE WORKS**

- (a) The Contractor indemnifies the Principal against any liability, loss or claim suffered or incurred by the Principal in connection with:
  - (i) illness, personal injury or death of any person;
  - (ii) loss of, or damage to, the Principal's property; or
  - (iii) loss of, or damage to, any other property,arising out of or as a consequence of the carrying out of the work under the Contract.
- (b) The Contractor's liability in paragraph (a) is reduced proportionally to the extent the liability, loss or claim was caused by the negligence of, or breach of the Contract by, the Superintendent or the Principal (or others for whom the Superintendent or Principal is responsible).
- (c) This clause does not apply to:
  - (i) the extent that the Contractor's liability is limited by another provision of the Contract;
  - (ii) exclude any other right of the Principal to be indemnified by the Contractor;
  - (iii) materials, constructional plant or equipment entrusted to the Contractor by the Principal; and
  - (iv) claims in respect of the Principal's right to have the Works carried out.
- (d) The operation of Part 1F of the *Civil Liability Act 2002* (WA) does not apply to this Contract.
- (e) This GCC 4 survives termination or expiry of the Contract.

## **GCC 5 INSURANCE**

### **5.1 Contractor's Risk and Public Liability Insurance**

- (a) The following paragraphs (i) to (vii) apply where Annexure A states the Contract is covered by Principal Controlled Insurance:
  - (i) The Principal has comprehensive "Principal Controlled Insurance" for material loss or damage to contract property and for liabilities to third parties for personal injury and damage to property arising out of the Contract.

Copies of certificates of currency and policy wordings are available from the Main Roads website at <https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/>

The Principal must maintain this insurance policy or a replacement policy materially on the same terms and conditions until all work including any remedial work is completed or otherwise while the Contractor has an insurable interest.
  - (ii) If, having made reasonable enquiries of the market, the Principal considers that it is not commercially feasible to comply strictly with paragraph (i), the Principal may replace or renew the insurance policy on terms and conditions which are materially different and the Principal must, within a reasonable period of time:
    - (A) notify the Contractor that the insurance policy has been replaced or renewed on terms and conditions materially different; and
    - (B) provide to the Contractor access to copies of the relevant policy wording and schedules.



- (iii) The Principal does not hold out any interpretation of the policy wordings and nothing in this clause affects or limits any liability of the Contractor under the Contract except to the extent that the amount of any claim is paid under the policy.
  - (iv) The Contractor must not do or permit any act or permit or suffer any circumstances which may cause the policy to become void or voidable. The Contractor must comply with the conditions of the policy and the requirements of the insurer, at its own expense, so as to prevent:
    - (A) the invalidation of the policy; or
    - (B) prejudice of the rights of any of the insured under the policy.
  - (v) If any deductible, as specified in the Principal Controlled Insurance schedule, is deducted by the insurer from any payment to the Principal (in response to a claim under the policy) by reason of an act or omission of the Contractor, the amount of the deductible will be a debt due to the Principal from the Contractor and may be deducted by the Principal from moneys due to the Contractor under GCC 19.
  - (vi) All dealings by the Contractor with the insurer under the Contract must be conducted through the Principal.
  - (vii) The Contractor acknowledges and agrees that before entering into the Contract, the Contractor has satisfied itself as to the provisions, terms, conditions, exclusions and excesses of the policy taken out by the Principal and that the Contractor accepts these in full.
- (b) The following paragraphs (i) to (iii) apply where Annexure A states the Contractor is required to provide Contractor's Risk and/or Public Liability insurance:
- (i) Without limiting the parties' obligations and responsibilities the Contractor must effect and continuously maintain, or continuously maintain, where stated in Annexure A:
    - (A) a Contractor's Risk Policy for an amount not less than that stated in Annexure A to the date of the Certificate of Practical Completion; and
    - (B) a Public Liability Policy to the date the Superintendent issues the Final Certificate, for an amount not less than that stated in Annexure A, which provides cover in relation to liability arising out of any claim by any person (including the Principal) in respect of personal injury, death, disease or illness (including mental illness) or loss of, or damage to, or loss of use of, property (other than property insured under sub-paragraph (A) above) arising out of or in relation to the work under the Contract.
  - (ii) Each of the above insurances must cover the Principal, the Contractor, the Superintendent, all subcontractors and their respective representatives, agents and employees for their respective rights, interests and liabilities and include a Cross Liabilities clause.
  - (iii) The Contractor must provide the Superintendent with satisfactory proof of the above insurance before commencement of the work under the Contract.

## **5.2 Insurance of Employees**

- (a) Before commencement of the work under the Contract, the Contractor must insure against the Contractor's statutory and common law liability regarding any claim for death of, or personal injury to, any persons employed or engaged by the Contractor:
  - (i) at common law and for breach of any statutory duty or legislative requirements (to the extent permitted by law); and

- (ii) for any compulsory statutory workers' compensation benefits or other liability under the *Workers' Compensation and Injury Management Act 1981* (WA) or other applicable legislation,

which arises out of, or is caused by, the performance or non-performance of work by the Contractor or any subcontractor or agent or employee of the Contractor or subcontractor.

- (b) The insurance must, in relation to employer's liability at common law, have a limit of cover in respect of any one occurrence of \$50,000,000 as the limit of cover for employer's liability insurance.
- (c) The insurance cover must be maintained until the Final Certificate.
- (d) The Contractor must ensure that all consultants and subcontractors have similarly insured their employees.
- (e) The insurance must be in the name of the Contractor and extended to indemnify the Principal as principal or owner or occupier against any liability which it may incur to such employees or persons engaged in the provision of the work under the Contract both statutory and at common law.

### **5.3 Motor Vehicle Insurance**

- (a) The Contractor must maintain or effect and maintain, and ensure that each of its subcontractors maintains or effects and maintains insurance cover in relation to motor vehicles in respect of liability to third parties for personal injury, death, disease or illness (including mental illness) or liability to third parties for loss of or damage to property.
- (b) The Contractor must, from the time it commences the work under the Contract, maintain continuous insurance cover in relation to motor vehicles in the terms referred to in paragraph (a) until the time the Superintendent issues the Final Certificate.
- (c) The limit of liability must be no less than \$5,000,000.
- (d) Other than for compulsory third party motor vehicle insurance, the insurance must be in the name of the Contractor and, to the extent permitted by law, be extended to indemnify the Principal as principal for Claims from Third Parties.

### **5.4 Contractor's Plant and Equipment Insurance**

- (a) The Contractor must maintain or effect and maintain, and ensure that each of its subcontractors maintains or effects and maintains, a policy that provides cover in respect of the constructional plant under the ownership or control of the Contractor or its subcontractors (whether owned, hired or leased and not otherwise being the property of the Principal) for which the Contractor or its subcontractors are responsible (whether located on or off site) that is not otherwise covered under Principal Controlled Insurance.
- (b) The insurance must cover any liability to third parties for personal injury, death, disease or illness (including mental illness) or liability to third parties for loss or damage to property caused by or in connection with the use of the constructional plant.
- (c) The policy referred to in this clause must:
  - (i) cover the Principal, the Contractor, the Superintendent, and their respective representatives, agents and employees for their respective rights, interests and liabilities;
  - (ii) have a limit of cover at least equal to the full replacement value of the constructional plant referred to in paragraph (a), including delivery to the site; and
  - (iii) have a limit of liability in respect of the cover referred to in paragraph (b) of no less than \$10,000,000 per occurrence.

- (d) The Contractor must, from the time it commences the work under the Contract, maintain continuous cover under the policy referred to in this clause or a replacement policy in the same material terms until the time the Superintendent issues the Final Certificate.
- (e) The Contractor must ensure that the policy referred to in this clause provides that the insurer waives all rights and all entitlement to remedies or relief against the Principal and the Superintendent (and their respective representatives, agents and employees) to which the insurer might become entitled by way of subrogation.

## **GCC 6 INTELLECTUAL PROPERTY**

- (a) The Principal warrants that, unless specified otherwise in the Contract, design, materials, documents and methods of working specified in the Contract or provided or directed by the Principal, do not infringe any Intellectual Property right of any third party.
- (b) The Contractor:
  - (i) warrants that any design, materials, documents and methods of working provided by the Contractor do not, and will not, infringe any Intellectual Property rights of any third parties; and
  - (ii) indemnifies the State against any claims, loss, damage or liability of any kind arising out of or in connection with any actual or alleged infringement of any Intellectual Property rights in connection with the design, materials, documents and methods of working provided by the Contractor.
- (c) The undertakings and warranties set out in this clause are given continuously and survive the expiry or termination of this Contract.

## **GCC 7 ASSIGNMENT AND SUBCONTRACTING**

- (a) The Contractor must not:
  - (i) subcontract the whole of the work under the Contract; or
  - (ii) assign the Contract or assign, mortgage, charge or encumber any of the moneys payable under the Contract or any other benefit whatsoever arising under the Contract.
- (b) The Contractor must not subcontract any part of the work under the Contract without the prior written approval of the Superintendent. The approval of the Superintendent does not relieve the Contractor from any liability or obligation under the Contract. The Contractor must:
  - (i) where the value of the work to be subcontracted to any subcontractor exceeds \$1.5 million (GST inclusive), conduct a financial due diligence check on the subcontractor and provide the Superintendent with a signed statement certifying that the subcontractor has satisfied this check with the request for approval;
  - (ii) provide the Superintendent with full particulars of the proposed part of the work under the Contract and proposed subcontractor and such other information which the Superintendent reasonably requests, including the proposed subcontract documents (without prices) and details of any criminal convictions (other than a “spent conviction” within the meaning of the *Spent Convictions Act 1988* (WA)) of any director, owner or key management personnel of the subcontractor; and
  - (iii) comply with the retention trust account requirements of the SOPA Legislation (if applicable to the relevant subcontract);

- (iv) include in each subcontract such terms as are required by this Contract, including GCC 31 and GCC 38; and
- (v) inform all subcontractors that the contractual relationship between the Contractor and the subcontractor does not include or imply any obligation on the Principal to the subcontractor.

## **GCC 8 CONSTRUCTION PROGRAM**

- (a) Prior to commencement of the work under the Contract, the Contractor must provide to the Superintendent, for approval, a detailed construction program which must:
  - (i) adequately show the staging, sequencing and key milestones for the work under the Contract; and
  - (ii) include a time bar diagram giving details of the earliest dates by which the various stages or portions of work under the Contract are to be commenced and completed, and show the critical path.
- (b) The Contractor must submit an amended construction program for approval as required from time to time, and at no less frequency than that stated in the Work Order (if any applies and is stated) or otherwise stated in Annexure A, so that the Construction Program represents the current state of progress of the work under the Contract.
- (c) The Contractor must not alter the Date for Practical Completion in the Construction Program unless an extension of time is granted.
- (d) The Construction Program which the Superintendent has most recently approved will be treated as being part of the Contract.

## **GCC 9 SITE POSSESSION, COMMENCEMENT, COMPLETION AND EXTENSIONS**

### **9.1 Possession of Site**

- (a) The Principal gives the Contractor possession of the site, or sufficient possession of the site, for commencement of the work under the Contract upon:
  - (i) the date, or on satisfaction of the conditions, specified in the Work Order or if not specified, on issue of the Work Order; or
  - (ii) otherwise, the date, or on satisfaction of the conditions, specified in the Acceptance Letter or if not specified, on issue of the Acceptance Letter.

If the Principal has not given the Contractor possession of the whole of the site, the Principal must give the Contractor possession of such further portions of the site as may, from time to time, be necessary for carrying out the work under the Contract.

- (b) Possession of the site confers on the Contractor a right to only use and control the site as is necessary to enable the Contractor to carry out the work under the Contract. Occupation of the site is not deemed to be exclusive possession. The Contractor accepts that the site may be the subject of other work being carried out by other contractors and third parties.
- (c) In so far as compliance with the Contract permits or requires, the Contractor must keep the site and the Works secure, safe and free from all unauthorised access.

### **9.2 Access to Works**

The Contractor must give to the Principal and the Superintendent, and any other persons authorised in writing by the Principal or the Superintendent, reasonable access to the work under the Contract and must provide every reasonable facility necessary for the supervision, examination and testing of any work or materials for the Contract, including the provision of surveillance and

audits of the Contractor's Quality Management Plan and Health and Safety Management Plan, at any place where any such work is being or is to be carried out or materials are prepared.

### **9.3 Preconditions to Commencement of Works on Site**

- (a) Notwithstanding GCC 9.1, the Contractor must not commence any work under the Contract on the site:
  - (i) until the Superintendent has notified the Contractor that the Superintendent has approved the Contractor's plans that are specified in Annexure A; and
  - (ii) under a Work Order, until the Superintendent has notified the Contractor that the Superintendent has approved the Contractor's plans, or additional provisions to the Contractor's plans, that are specified in the Work Order.
- (b) The Contractor must comply with any subsequent instructions from the Superintendent to amend the plans, within a time limit specified by the Superintendent.

### **9.4 Commencement**

- (a) The Contractor must:
  - (i) give the Superintendent three days clear notice in writing prior to commencing work under the Contract (or in respect of a Work Order) on the site; and
  - (ii) commence the work under the Contract within the period stated for commencement in the Work Order (if any applies and if stated), or otherwise within the period stated in Annexure A.

If no period is stated, the Contractor must commence the work under the Contract within 20 Business Days of the date of the Acceptance Letter or date of the Work Order (as applicable) or such other date as specified.

- (b) The Contractor must:
  - (i) proceed with the work under the Contract with due expedition and without delay; and
  - (ii) execute the work under the Contract in accordance with the Contract and any directions of the Superintendent and at a rate of progress satisfactory to the Superintendent.

### **9.5 Date for Practical Completion**

The Contractor must achieve Practical Completion by the Date for Practical Completion.

### **9.6 Extension of Time**

- (a) The Contractor may apply in writing within 14 days of the occurrence of any event beyond the reasonable control of the Contractor, (that is not attributable to the act, omission or default of the Contractor or the employees, agents or subcontractors of the Contractor or its subcontractors) for an extension of time to the Date for Practical Completion stating the delay (including its extent and the Works affected), the cause of delay and the number of days extension claimed, with supporting documentation. On receipt of such application, the Superintendent must determine whether an extension should be granted, and if granted, the length of the extension. In determining a reasonable extension of time for an event causing delay, the Superintendent shall have regard to whether the Contractor has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay.
- (b) Without limiting paragraph (a), the Superintendent may, at any time by written notice to the Contractor, grant an extension of time to the Date for Practical Completion.

- (c) In determining whether the Contractor is or will be delayed in reaching Practical Completion by inclement weather, regard must be had to:
  - (i) meteorological averages;
  - (ii) what delays arising from adverse conditions both seasonal and annual the Contractor could reasonably have expected;
  - (iii) the net effect overall of any beneficial weather conditions and any beneficial effect on the work under the Contract of such conditions with respect to any saving in time; and
  - (iv) the immediate effect of delays arising from individual instances of adverse weather conditions.
- (d) The Contractor acknowledges that it can comply with the notice requirement in paragraph (a) in the prescribed period and compliance with the provision is not unreasonably onerous.

## **GCC 10 MATERIALS AND WORK**

### **10.1 Quality of Materials and Work**

- (a) In performing the work under the Contract, the Contractor must:
  - (i) use materials, fixtures, fittings and finishes which:
    - (A) comply with the requirements of this Contract, including the Specifications, drawings, any specified trade name, brand or catalogue number unless the Superintendent approves a substitute item;
    - (B) unless otherwise specified in this Contract, are new and consistent with the best industry standards for work of a nature similar to the work under the Contract; and
    - (C) are of high acceptable quality, free from defects and which are fit for their purpose and consistent with the nature and character of the Works;
  - (ii) use workmanship of the standard prescribed in this Contract or to the extent not prescribed, a standard consistent with best industry practice;
  - (iii) comply with the standards specified in this Contract or, if this Contract does not specify the applicable standards:
    - (A) those standards as would ordinarily be applied in the circumstances (and if more than one standard, the highest of those standards); or
    - (B) the standard of workmanship, material, finish, or other aspect (as applicable) as determined by the Superintendent.
- (b) The Superintendent may, at any time before the issue of the Final Certificate, reject any material or work which is not in accordance with the Contract and may direct its replacement, correction or removal. All such replacements, rejections or removals will be at the Contractor's cost.

### **10.2 Testing of Materials and Work**

Materials and work are subject to such tests as are required by the Contract or as may be reasonably directed by the Superintendent to establish the conformity of materials and workmanship with the Contract. Except as otherwise stated in the Contract, the work of testing and the cost thereof must be undertaken by the Contractor.



## **GCC 11 PRINCIPAL, SUPERINTENDENT AND CONTRACTOR REPRESENTATIVES**

### **11.1 Principal's Representative**

- (a) The Principal may from time to time appoint individuals to exercise any functions of the Principal under the Contract but not more than one Principal's Representative may be delegated the same function at the same time. The appointment of a Principal's Representative does not prevent the Principal from exercising any function.
- (b) The Principal must notify the Contractor in writing of:
  - (i) the appointment and the name of any Principal's Representative and the functions delegated to the Principal's Representative;
  - (ii) any changes or variation to the functions delegated to the Principal's Representative; and
  - (iii) the termination of the appointment of a Principal's Representative.

### **11.2 Superintendent's Representative**

- (a) The Superintendent may from time to time appoint individuals to exercise any functions of the Superintendent under the Contract but not more than one Superintendent's Representative can be delegated the same function at the same time. The appointment of a Superintendent's Representative does not prevent the Superintendent from exercising any function.
- (b) The Superintendent must notify the Contractor in writing of:
  - (i) the appointment and the name of any Superintendent's Representative and the functions delegated to the Superintendent's Representative;
  - (ii) the termination of the appointment of a Superintendent's Representative.

### **11.3 Contractor's Representative**

- (a) The Contractor must personally direct the execution of the work under the Contract and have an experienced and competent representative approved by the Superintendent to control the work under the Contract. The Contractor must give the Superintendent written notice of the representative's name and contact details, including any changes to that person and/or those details for approval.
- (b) The Contractor's Representative must be based on the site if Annexure A requires, or otherwise be based within the State of Western Australia.
- (c) Directions of the Superintendent given to the Contractor's Representative are deemed to be directions given to the Contractor.

## **GCC 12 PROVISIONAL SUMS**

- (a) If the Contract includes any provisional sum, the Contractor must not carry out the work to which the provisional sum relates unless directed to do so by the Superintendent. The Contractor acknowledges that the Superintendent has no obligation to direct any work to be carried out in relation to a provisional sum.
- (b) If the Superintendent directs the Contractor to perform or supply the item to which a provisional sum (or part thereof) relates, the Contract Sum will be adjusted to add the value of the work actually carried out (if any) calculated pursuant to GCC 13(e).



### **GCC 13 VARIATIONS**

- (a) The Superintendent may, by notice to the Contractor, direct the Contractor to vary the work under the Contract, accelerate the work under the Contract or carry out additional works. The Contractor must promptly comply with any such direction.
- (b) The Superintendent may, by notice to the Contractor, request a quotation for a proposed variation to the work under the Contract or additional work and the Contractor must promptly notify the Superintendent of the Contractor's reasonably estimated:
  - (i) cost to carry out and complete the proposed variation; and
  - (ii) impact of the proposed variation on the Construction Program and the Date for Practical Completion.
- (c) On receipt of the quotation from the Contractor, the Superintendent may elect to issue a variation direction under paragraph (a), in which case the Contractor must carry out the variation in accordance with the variation direction and the variation quote.
- (d) The Contractor will be reimbursed for the reasonable costs of preparing a variation quote in compliance with paragraph (b).
- (e) If the Superintendent issues a variation direction, the Contract Sum will be adjusted up or down, as required for the value of the variation. The adjustment to the Contract Sum will be:
  - (i) the amount agreed by the parties based on the rates and prices in this Contract and, if applicable, the variation quote; or
  - (ii) failing agreement, the amount determined by the Superintendent acting reasonably and notified to the Contractor.

### **GCC 14 LIQUIDATED DAMAGES**

- (a) If the Contractor fails to achieve Practical Completion by the Date for Practical Completion, the Contractor must pay liquidated damages to the Principal, at the amount specified in the Work Order (if applicable) or otherwise Annexure A, calculated for every calendar day after the Date for Practical Completion up to and including the earliest of:
  - (i) the Date of Practical Completion;
  - (ii) the date the Works are taken out of the hands of the Contractor by the Principal in accordance with GCC 20.2; or
  - (iii) the date this Contract is terminated in accordance with GCC 20.2.
- (b) The payment of liquidated damages does not relieve the Contractor of any of its obligations in respect of the work under the Contract or prejudice any other rights the Principal may have under this Contract.
- (c) The Contractor agrees that the liquidated damages are a genuine pre-estimate of the loss that the Principal will incur if Practical Completion is not achieved by the Date for Practical Completion, and the Contractor agrees to exclude and waives any right or the benefit of the application of any legal rule or principle, including in accordance with statute, equity and common law, relating to the enforceability of this GCC 14 or the characterisation of it as a penalty.
- (d) If the Date for Practical Completion is extended after the Contractor has paid liquidated damages, the Principal must repay to the Contractor any liquidated damages paid or deducted in respect of the period prior to and including the new Date for Practical Completion as soon as practicable.

## **GCC 15 PRACTICAL COMPLETION AND DEFECTS LIABILITY PERIOD**

- (a) As soon as in the opinion of the Superintendent Practical Completion has been achieved, the Superintendent must issue a Certificate of Practical Completion and the Contractor must give possession of the site and the Works to the Principal.
- (b) The Contractor must, at its own expense, execute all work of repair, amendment, reconstruction, rectification and making good of defects, imperfections, shrinkages or other faults as may be required by the Superintendent during the Defects Liability Period or within 14 days after its expiration as a result of an inspection made prior to its expiration.
- (c) Upon compliance with paragraph (b), the Superintendent will issue a Final Certificate to the Contractor and the Principal.

## **GCC 16 CLEANING UP AND MINIMISE INTERFERENCE**

- (a) The Contractor must keep the site and the Works clean and tidy during the Contract and regularly remove rubbish and surplus material.
- (b) Within 14 days, or further period determined by the Superintendent, after the Date of Practical Completion, the Contractor must remove from the site all constructional plant, surplus material, rubbish and temporary works, and fill and consolidate and level off all excavations (other than those forming part of the Works) and leave the whole of the site and the Works clean and tidy and free of rubbish and surplus material to the satisfaction of the Superintendent.
- (c) All operations involving the execution of the work under the Contract must, except where otherwise permitted by the Superintendent, be carried on so as not to interfere with the public convenience or the access to, use and occupation of public or private roads and footpaths or to or of Crown lands or adjoining public or private properties.
- (d) In so far as compliance with the Contract permits or requires, the Contractor must prevent nuisance, noise, dust, air pollution, odour, vibration and any disturbance from occurring at levels which adversely affect existing facilities (if any) and areas adjacent to the site and, where, in the opinion of the Superintendent, levels of nuisance, noise, dust, air pollution, odour, vibration or disturbance are not in the interests of the safety of users of existing facilities (if any) or any areas adjacent to the site, comply with any direction by the Principal to stop or change the manner of undertaking the work under the Contract.

## **GCC 17 CONTRACT REPORTING**

### **17.1 General**

- (a) The Contractor must provide regular reporting to the Superintendent in accordance with the Contract which must:
  - (i) contain all information required, including any relevant supporting documentation;
  - (ii) be accurate and verifiable, as may be reasonably determined by the Superintendent;
  - (iii) be provided in the format required under the Contract or in any other format reasonably requested by the Superintendent; and
  - (iv) be provided within the timeframes required under the Contract.
- (b) The submission of any reporting by the Contractor does not constitute approval by the Superintendent or the Principal of the content of the reports.

## **17.2 Reporting to be Provided**

- (a) The Contractor must submit the following to the Superintendent at the times specified in the Contract, and if not specified, monthly:
  - (i) current Construction Program;
  - (ii) in respect of the Work Order or Contract (as applicable):
    - (A) WAIPS Report pursuant to GCC 39 if applicable; and
    - (B) Priority Start Report, pursuant to GCC 40 if applicable;
  - (iii) all information required under GCC 17.3(a);
  - (iv) the 'Contractor Combined Monthly Reporting' detailed at GCC 17.3(b);
  - (v) any further reports required pursuant to the Specifications, including those related to the management of quality, traffic, safety and health and the environment; and
  - (vi) such other reports as required under the Contract.

## **17.3 Contractor Reporting Portal and Combined Monthly Reporting**

In addition to any other requirement under the Contract, the Contractor must provide on a monthly basis for each Work Order or the Contract (as applicable):

- (a) all information required within the 'Contractor Reporting Portal' on the Main Roads website at:  
<https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/contractor-reporting/>; and
- (b) completed 'Contractor Combined Monthly Reporting' (except to the extent that the information has already been submitted within the Contractor Reporting Portal under paragraph (a) above) in the form detailed on the Main Roads website at:  
<https://www.mainroads.wa.gov.au/technical-commercial/contracting-to-main-roads/contractor-reporting/>

## **17.4 Timing of Monthly Reporting**

For any reporting that is required to be submitted on a monthly basis, unless otherwise stated, the report for a relevant calendar month must be provided by the 5th day of the next calendar month.

## **17.5 Failure to Adequately Report**

In addition to any other rights of the Principal under the Contract, if a report required to be submitted by the Contractor is not submitted or does not meet the requirements of GCC 17.1(a), the Superintendent may, in determining the value of work carried out by the Contractor, value the cost of preparing and submitting the report under GCC 13 and the Contractor shall deduct such value when issuing the next invoice for payment pursuant to GCC 19.

## **GCC 18 SERVICE OF NOTICES**

- (a) Each communication (including each notice, consent, approval, request and demand) under or in connection with this Contract (**notice**) must be in writing and either delivered or posted by prepaid post or sent by email to the address or email address of the addressee, or as otherwise notified by that party to each other party.
- (b) Any document that by or under the SOP Legislation is authorised or required to be given by a party to the other party, must be given in accordance with paragraph (a), and the parties acknowledge that it is reasonably practicable to provide such documents in this manner.
- (c) A notice will be regarded as given and received:

- (i) in the case of delivery by post, five Business Days after the date of posting (if posted to an address in Australia) or seven Business Days after the date of posting (if posted to an address in another country);
- (ii) in the case of delivery in person, when delivered; or
- (iii) in the case of email, at the time the email is sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been received,

but if the result is that a notice would be taken to be given or made on a day that is not a Business Day or is later than 5pm (local time) it will be conclusively taken to have been duly given or made at the start of business on the next Business Day, except in the case of a notice relating to the release of a “Hold Point” or “Witness Point” required in the Specifications.

## **GCC 19 PAYMENTS, RETENTION, SECURITY AND INVOICES**

NOTE: If payments in relation to this contract are to be undertaken utilising a **Project Bank Account (PBA)**, the contents of GCC 19 are deemed to have been deleted and replaced in their entirety with “*Minor Works Project Bank Account (PBA) Pack, Attachment 1, GCC 19*” which is available from the Minor Works ZIP file on Main Roads website at [Project Bank Accounts \(PBA\) | Main Roads Western Australia](#)

### **19.1 Payment Claims**

- (a) The Contractor must submit to the Superintendent:
  - (i) claims for payment in accordance with the Contract on the last day of each calendar month, commencing from the month in which the work under the Contract is first undertaken; and
  - (ii) a final payment claim in accordance with the Contract, and endorse it ‘Final Payment Claim’, before the date that is 6 months after the completion of the Works,

and such payment claims will be deemed to be given by the Contractor to the Principal for the purposes of the SOP Legislation.
- (b) Each of the Contractor’s claims for payment must:
  - (i) be in writing and expressly state that: “This is a Payment Claim made under the *Building and Construction Industry (Security of Payment) Act 2021 (WA)*”;
  - (ii) identify the Contract number and Principal purchase order number, and be in the form approved by the Superintendent in writing;
  - (iii) show the amount due to the Contractor in accordance the Contract and describe the items and quantities of Works that the Contractor has performed and to which the claim relates in sufficient detail for the Superintendent to assess the claim; and
  - (iv) include any further information as may be reasonably required by the Principal from time to time.

### **19.2 Payment Certificate**

- (a) Within 12 Business Days after a claim for payment is given by the Contractor, the Superintendent must:
  - (i) assess the Contract value of the Works performed and provided in conformity with the Contract;
  - (ii) calculate, or apply the Superintendent’s determination of, the amount of any adjustment to be made in accordance with the Contract; and

- (iii) issue a payment certificate to the Contractor and the Principal showing the amount due to the Contractor, and if the amount is more or less than the amount claimed by the Contractor, the reasons for the difference and if any part of the payment claimed is withheld, the reasons why payment is withheld.
- (b) A payment certificate issued under paragraph (a)(iii) shall be deemed to be a payment schedule issued by the Principal to the Contractor for the purposes of the SOP Legislation.
- (c) The assessment made by the Superintendent under paragraph (a)(i) is interim only and may be subject to a revised assessment by the Superintendent in the form of a revised payment certificate issued to the Contractor and the Principal. Any revised payment certificates will be deemed to be a payment schedule issued by the Principal for the purposes of the SOP Legislation.
- (d) Subject to GCC 23, the assessments made under paragraph (a)(i) and (c) become final three calendar months from the date of payment of the final claim in respect of the Works.
- (e) The Principal may direct the Superintendent to issue a payment certificate which includes amounts the Principal will deduct or set-off from monies due to the Contractor under paragraph (a), any monies due from the Contractor to the Principal under the Contract or on any other account.
- (f) Failure by the Superintendent to set out in a payment certificate an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal, will not prejudice the Principal's right to subsequently exercise that right to retain, deduct, withhold or set-off any amount.

### **19.3 Payment**

- (a) Within 20 Business Days of receipt of a claim for payment under GCC 19.1, the Principal must pay the Contractor, or the Contractor must pay the Principal, as applicable, an amount not less than the amount shown in the payment certificate as due to the Contractor or due to the Principal.
- (b) If no payment certificate has been issued by the Superintendent within the time prescribed in GCC 19.2(a), the Principal must pay the amount of the Contractor's claim, excluding any amount claimed for damages arising out of or in connection with breach of the Contract.
- (c) No certificate of the Superintendent is deemed to signify approval or acceptance of any completed work.

### **19.4 Retention Monies and Security**

- (a) The Contractor agrees to provide security to the Principal for the performance of the Contractor's obligations under the Contract in the form of retention monies, being:
  - (i) an amount comprising the rate stated in Annexure A of the value of each progress payment; and
  - (ii) in the aggregate not more than the rate stated in Annexure A of the Contract Sum.
- (b) The Principal may have recourse to the retention monies referred to in paragraph (a), or to any replacement security, if:
  - (i) the Contractor, in the reasonable opinion of the Principal formed at the relevant time, is in default of an obligation of the Contractor required under the Contract; and
  - (ii) the Principal gives the Contractor written notice of its intention to have recourse, and five Business Days have passed since that notice.
- (c) The Contractor may at any time provide security in a form acceptable to the Principal in lieu of and to the same value as the money retained and/or required to be retained in

accordance with paragraph (a). Where the security is provided prior to the commencement of Works the value of the security required is for an amount equal to the rate for retention stated in Annexure A of the Contract Sum.

- (d) The moneys retained by the Principal must be:
  - (i) reduced to one half of the rate stated in Annexure A of the final value of the work on issue of the Certificate of Practical Completion; and
  - (ii) paid or the security released to the Contractor within 14 days of the date of the Final Certificate.
- (e) Interest is not payable on retained moneys.

#### **19.5 Recipient Created Tax Invoices or Tax Invoices**

- (a) The Principal will, unless Annexure A states that Recipient Created Tax Invoices do not apply, issue Recipient Created Tax Invoices in compliance with the GST Law. For this purpose, the Principal and the Contractor agree:
  - (i) The Principal can issue tax invoices in respect of supplies under the Contract.
  - (ii) The Contractor will not issue tax invoices in respect of the supplies under the Contract.
  - (iii) The Contractor acknowledges that it is registered for GST at the date of award of Contract and that the Contractor will notify the Principal if the Contractor ceases to be registered.
  - (iv) The Principal acknowledges that it is registered for GST at the date of award of Contract and that the Principal will notify the Contractor if the Principal ceases to be registered for GST.
- (b) If Annexure A states that Recipient Created Tax Invoices do not apply, unless otherwise requested by the Principal, the Contractor will issue tax invoices to the Principal in compliance with the GST Law. If a supply constitutes a taxable supply, the obligation of the Principal to pay GST is conditional on the receipt of a tax invoice that complies with the GST Law. In this paragraph (b), the terms *supply*, *taxable supply* and *tax invoice* have the meaning given in the GST Law.

#### **19.6 Notice in relation to SOP Legislation**

- (a) The Contractor must:
  - (i) ensure that a copy of any written communication of whatever nature in relation to the SOP Legislation (including a 'payment claim' under the SOP Legislation) which it delivers or is deemed to deliver to the Principal is provided to the Superintendent at the same time; and
  - (ii) when the Contractor becomes aware that a subcontractor is entitled to suspend work pursuant to the SOP Legislation or if the Contractor receives any communication from any subcontractor in relation to any adjudication pursuant to the SOP Legislation, promptly and without delay give the Principal and the Superintendent a copy of any written communication of whatever nature in relation to the SOP Legislation which the Contractor receives from a subcontractor.
- (b) If the Contractor suspends work pursuant to the SOP Legislation, the Contractor will have no claim other than as expressly provided for by the SOP Legislation.
- (c) If any of the Contractor's subcontractors suspend work, services or supply pursuant to the SOP Legislation, the Contractor will have no claim (including under GCC 9.6).



## **19.7 Adjudication under SOP Legislation**

- (a) Notwithstanding the dispute resolution process provided in GCC 23, if a Dispute relates to a payment certificate, the Contractor may make an adjudication application under Part 3 of the SOP Legislation if:
  - (i) the Principal has not paid the amount in a payment certificate in full by the due date as set out in GCC 19.3(a); or
  - (ii) the amount provided in a payment certificate is less than the claimed amount or no payment is proposed in the payment certificate.
- (b) If the Superintendent or the Principal has not provided a payment certificate, an adjudication application under Part 3 of the SOP Legislation cannot be made by the Contractor unless:
  - (i) the Contractor gives notice within 20 Business Days after the due date for payment in GCC 19.3(a); and
  - (ii) the Superintendent and the Principal have been given the opportunity to issue a payment certificate within five Business Days after receiving the Contractor's notice.
- (c) The Contractor must bring an adjudication application within 20 Business Days of becoming entitled to make an adjudication application in accordance with paragraphs (a) and (b) and the SOP Legislation.
- (d) The adjudication application must:
  - (i) be in writing and in the form prescribed by the SOP Legislation;
  - (ii) identify the payment claim and payment certificate;
  - (iii) be accompanied by a copy of this Contract;
  - (iv) be made to the authorised nominated authority chosen by the Contractor with the accompanying application fee (as applicable); and
  - (v) include any submissions the party making the adjudication application wishes to include.
- (e) The Contractor must give a copy of the adjudication application to the Principal within one Business Day of making the application.
- (f) A party may bring a review application if permitted under the SOP Legislation within five Business Days after that party is given the determination.
- (g) Nothing in this Contract will be construed to:
  - (i) make any act or omission of the Principal in contravention of the SOP Legislation (including a failure to pay an amount becoming due under the SOP Legislation) a breach of this Contract (unless the Principal would have been in breach of this Contract had the SOP Legislation had no application); or
  - (ii) give to the Contractor rights or remedies under this Contract which extend or are in addition to rights or remedies given to the Contractor by the SOP Legislation in respect of any act or omission of the Principal in contravention of the SOP Legislation.

## **GCC 20 DEFAULT AND TERMINATION**

### **20.1 Substantial Breach**

- (a) If the Superintendent certifies to the Principal that the Contractor has committed a substantial breach of the Contract, the Principal may give the Contractor a notice to show cause within 7 days of the notice or such longer period as specified in the notice.



- (b) Substantial breaches of the Contract include the Contractor:
- (i) failing to provide security (including any guarantee required under GCC 29) or evidence of insurance;
  - (ii) failing to execute the Works at a rate of progress satisfactory to the Superintendent;
  - (iii) neglecting or omitting to execute any instruction of the Superintendent;
  - (iv) failing to complete the whole of the Works within the period stated for completion or such extended time as the Superintendent may grant;
  - (v) substantially departing from the Construction Program without reasonable cause or the Superintendent's approval (or where there is no Construction Program, failing to proceed with due expedition and without delay);
  - (vi) intimating that it is unwilling or unable to complete the Works;
  - (vii) or the guarantor company pursuant to GCC 29 (if applicable) becoming the subject of an Insolvency Event;
  - (viii) otherwise committing a substantial breach of contract; or
  - (ix) otherwise failing to perform any of the Works or comply with the Contract where that failure is not remedied within 10 Business Days of receipt of a notice from the Superintendent requiring the failure to be remedied.

## **20.2 Principal's Rights**

- (a) If the Contractor:
- (i) fails to show cause to the Principal's satisfaction within the period required by GCC 20.1;
  - (ii) becomes the subject of an Insolvency Event, or the guarantor company pursuant to GCC 29 if applicable) becomes the subject of an Insolvency Event; or
  - (iii) becomes a debarred supplier as defined in section 32 of the *Procurement Act 2020*, the Principal may, in addition to any other remedy which the Principal may have under this Contract or at law:
  - (iv) take out of the hands of the Contractor the whole or any part of the work remaining to be completed, in which case:
    - (A) the Contractor will not be entitled to any further payment in respect of that work;
    - (B) any cost or loss incurred by the Principal (including the engagement of any third party contractor) above the amount which would have been paid to the Contractor if the work had been completed by the Contractor will be a debt due and payable on demand by the Contractor; and
    - (C) such action does not amount to a waiver by the Principal of any of the Contractor's obligations under this Contract and the Contractor is not relieved from, and remains fully responsible for, those obligations; or
  - (v) terminate the Contract or the Work Order and all moneys held by the Principal may be used by the Principal for the purpose of completing the Works.

## **20.3 Termination by Frustration**

If, under the law governing the Contract, the Contract is frustrated, the Principal must pay the Contractor:

- (a) for the work completed prior to the date of frustration;

- (b) the cost of materials reasonably ordered by the Contractor for the Works, but only if the materials become the property of the Principal upon payment;
- (c) the reasonable cost incurred by the Contractor in the expectation of completing the whole of the Works and not included in any payment by the Principal;
- (d) all retention moneys and security;
- (e) the reasonable cost of removal of constructional plant and site facilities from the site;
- (f) the reasonable cost of the Contractor's workers to return to their base location at the date of frustration.

## **20.4 Insolvency Event**

In this GCC 20, **Insolvency Event** means any of the following:

- (a) a 'controller' (as defined in the *Corporations Act 2001* (Cth)), manager, trustee, receiver, receiver and manager, administrator or similar officer is appointed in respect of a body corporate or any asset of a body corporate;
- (b) a liquidator or provisional liquidator is appointed in respect of a body corporate;
- (c) any application is made to a court for an order, a court makes an order, a meeting is convened or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraphs (i) or (ii) of this definition;
  - (ii) winding up or de-registering a body corporate; or
  - (iii) proposing or implementing a scheme of arrangement,
 other than an application which is withdrawn, dismissed or set aside within 21 days after it is made;
- (d) a body corporate enters into, resolves to enter into or proposes a reorganisation, moratorium or other form of administration involving, an arrangement, composition or compromise with, or assignment for the benefit of, its creditors generally or any class of them, other than for the purposes of a reconstruction or amalgamation while solvent;
- (e) a body corporate becomes, states in writing that it is or is deemed under any law to be, insolvent or unable to pay its debts as and when they fall due;
- (f) the party commits an act of bankruptcy; and
- (g) any act is done or event occurs which, under any applicable law from time to time in any jurisdiction, has an analogous or similar effect to any act or event described in paragraphs (i) to (vi) of this definition (inclusive).

## **GCC 21 LEGAL AND EXTERNAL REQUIREMENTS**

### **21.1 Legal Requirements**

- (a) The Contractor must comply with all Legislative Requirements.
- (b) If a Legislative Requirement:
  - (i) is at variance with a provision of the Contract, as soon as the Contractor discovers the variance the Contractor must notify the Superintendent in writing specifying the difference; or
  - (ii) necessitates a change to the Works or method of working as may be specified in the Contract, the Superintendent may direct a variation under GCC 13.

- (c) The Contractor must give the Principal copies of the documents issued to the Contractor by any Government Agency in respect of the Works and, in particular, any approvals of work.

## **21.2 External Requirements**

- (a) The Contractor must comply with all applicable codes of practice, guidelines and standards, including those issued by the Principal.
- (b) The Contractor warrants that, in respect of its Tender for the Contract, it complied with the Australian Standard Code of Tendering AS 4120 – 1994.
- (c) The Principal is entitled to recover from the Contractor:
  - (i) any moneys received by the Contractor; or
  - (ii) any sum by which the Tender price was increased,in contravention of AS 4120 – 1994 as if such sum were a debt due from the Contractor to the Principal under or by virtue the Contract.

## **GCC 22 NOTIFICATION OF CLAIMS**

It is a condition precedent to the Principal being liable to meet any claim, other than a routine claim under the Contract for which payment is to be made under GCC 19, that the claim, together with particulars, is lodged in writing with the Superintendent no later than 14 days after the date of the occurrence of the events or circumstances on which the claim is based. The Contractor acknowledges that it can comply with this notice requirement in the prescribed period and compliance is not unreasonably onerous.

## **GCC 23 DISPUTE RESOLUTION**

### **23.1 Notice of Dispute**

- (a) Subject to paragraph (c), any question, dispute or difference of any kind (Dispute) arising out of or in connection with the Contract must be resolved in accordance with this clause.
- (b) If a party requires a Dispute to be resolved, that party must promptly serve on the other party a notice identifying and giving details of the Dispute (**Dispute Notice**).
- (c) Nothing in GCC 23 is a precondition to any of the following:
  - (i) the making of a payment claim by the Contractor under the SOP Act;
  - (ii) the making of an adjudication application or adjudication review application by the Contractor under the SOP Act; or
  - (iii) the exercise of any right, or the discharge of any obligation, under the SOP Act.

### **23.2 Negotiation and Mediation**

- (a) A senior executive or other designated officer of each party must meet within 10 Business Days after the date of the Dispute Notice and in good faith, attempt to resolve the Dispute.
- (b) If within 10 Business Days of the first meeting under paragraph (a), the Dispute is not resolved, the Principal or the Principal's delegate and the chief executive officer of the Contractor, or the chief executive officer's delegate must meet within 5 Business Days of the expiry of the 10 Business Days and, in good faith, attempt to resolve the Dispute.
- (c) If the Dispute is not resolved within 20 Business Days of the first meeting under paragraph (a), or such further time as may be agreed, and a party wishes to continue to seek to resolve the Dispute, the party must refer the Dispute to mediation.

- (d) The reference to mediation will commence when either party gives notice to the other requiring resolution of the Dispute under paragraph (c). If the Dispute is not referred to mediation within 20 Business Days of the expiration of the timeframe in paragraph (c), unless otherwise agreed by the parties, the Dispute Notice will be deemed to be withdrawn.
- (e) If the Dispute is referred to mediation, the mediation must be undertaken by an accredited mediator agreed by the parties, or failing agreement on the mediator and terms of appointment within a further 5 Business Days, an accredited mediator nominated by the Chairperson of the Resolution Institute (ACN 008 651 232) or the Chairperson's designated representative. The terms of the appointment must be in accordance with the Resolution Institute Mediation Rules. The location of the mediation will be Perth, Western Australia or other location determined by the Principal. Unless otherwise agreed by the parties, the mediator must be:
  - (i) a retired judge of the High Court of Australia or Supreme Court of a State or Territory of Australia; or
  - (ii) a dispute resolution practitioner with legal qualifications and at least 20 years' experience in the legal profession.
- (f) The parties agree to participate in the mediation in good faith. Any information or document obtained through or as part of the reference to mediation is confidential and may not be used for any purpose other than the settlement of the Dispute under this GCC 23.
- (g) The parties will share equally the mediator's fees for any mediation.
- (h) If the Dispute is not resolved within 20 Business Days of the commencement of the reference to mediation, either party may then, but not earlier, commence proceedings in any court of competent jurisdiction.

### **23.3 Impact of Application for Adjudication under SOP Legislation**

The SOP Legislation will have the following impact on GCC 23:

- (a) an application for adjudication or review of adjudication, or any document that is authorised or required under the SOP Act to be given by a party to the other party, will not be considered a Dispute Notice;
- (b) if a Dispute Notice is given and the Dispute the subject of that Dispute Notice is, or subsequently becomes, the subject of an application for adjudication under Part 3 of the SOP Act, the operation of GCC 23 will be stayed in relation to that Dispute until such time as the application for adjudication is withdrawn; and
- (c) if a determination is made by an adjudicator or review adjudicator pursuant to Part 3 of the SOP Act, GCC 23 will have no application to the Dispute the subject of that determination and either party may commence proceedings concerning that Dispute.

### **23.4 Other Matters**

- (a) Subject to the SOP Act, circumstances beyond the control of the parties permitting, each party must continue to perform the Contract even though a Dispute exists or proceedings have been commenced.
- (b) Notwithstanding any other provision of the Contract, nothing will prejudice the right of a party to institute proceedings to seek injunctive or urgent declaratory relief.
- (c) GCC 23 survives the termination or expiry of the Contract.

## **GCC 24 WARRANTIES BY THIRD PARTIES**

- (a) Upon the termination or expiry of the Contract, the Contractor must use all reasonable endeavours to ensure that any warranties in favour of the Contractor relating to the Works are assigned to the Principal.
- (b) If a particular warranty cannot be assigned to the Principal, the Contractor holds the benefit of the warranty in trust for the Principal and appoints the Principal as the Contractor's agent for the purposes of obtaining the benefit of the warranty and enforcing its terms.
- (c) This GCC 24 survives termination or expiry of the Contract.

## **GCC 25 MANUFACTURE AND SUPPLY OF MATERIALS**

The Contractor must give the Superintendent, on request, full particulars of the mode, place of manufacture, source of supply and the performance capacities or such information as the Superintendent considers necessary in respect of any of the materials, machinery or any other equipment to be used in connection with the Contract. The Contractor must, before arranging manufacture off-site of any works or fabricated materials to be used in connection with the Contract, give the Superintendent reasonable written notice of its intention to do so.

## **GCC 26 TAXES (INCLUDING GOODS AND SERVICES TAX (GST))**

- (a) Unless stated otherwise, all duties, taxes and charges imposed or levied in Australia or overseas in connection with the supply of goods and services used by the Contractor to undertake the Works are payable by the Contractor.
- (b) All amounts in this Contract (except where otherwise specified) are exclusive of GST.

## **GCC 27 ENFORCEMENT OF BUY LOCAL POLICY**

- (a) Where the Principal has granted the Contractor a Regional Business Preference or a Regional Content Preference, the Contractor must strictly abide by the rules and regulations governing the "Buy Local Policy" of the Government of Western Australia.
- (b) The Contractor must use the regional content detailed in the Tender or where agreed by the Principal, alternative regional content to the same value. With each payment claim the Contractor must submit a signed declaration on the use of regional content. This declaration must show the amount of regional content used by the Contractor to the date of the payment claim and the amount that the Contractor anticipates will be expended at the completion of the Contract, for each item of regional content in the Tender. The Superintendent may direct the Contractor to support the declaration with evidence of cost to demonstrate, to the reasonable satisfaction of the Superintendent, that the Contractor is actually using the regional content detailed in the Contractor's declaration, or where agreed by the Principal, alternative regional content to the same value.
- (c) The Contractor's failure to comply with this clause is a substantial breach of this Contract and without affecting any other right at common law or otherwise, the Principal will be entitled to recover by way of damages the amount of any price preference provided to the Contractor and will, provided the Principal has given the Contractor written notice of its intention to have recourse and five Business Days have passed since that notice, be entitled to have recourse to retention moneys, if any and, if those money are insufficient, then security under the Contract and any deficiency remaining may be recovered by the Principal as a debt due and payable.

## **GCC 28 PUBLIC DISCLOSURE OF CONTRACT DETAILS**

- (a) The Contract award information for all contracts above \$50,000 will be publicly available and published on the Tenders WA website at [www.tenders.wa.gov.au](http://www.tenders.wa.gov.au) after the Contract is legally established.
- (b) Documents and other information relevant to the Contract may be disclosed when required by law or under the *Freedom of Information Act 1992* (WA) or by tabling of documents in Parliament or under a Court order.
- (c) The Contractor must not have, make or bring any action, suit, claim, demand or proceeding against the Principal for any loss, injury, damage, liability, cost or expense resulting from public disclosure of Contract award information.
- (d) In this clause the expression “Contract Award information” means:
  - (i) general description of goods and/or services the subject of the Contract;
  - (ii) successful Contractor’s name(s); and
  - (iii) total Contract Sum.
- (e) Notwithstanding any provisions of this Contract to the contrary, the powers and responsibilities of the Auditor General for the State of Western Australia under the *Financial Management Act 2006* (WA) and the *Auditor General’s Act 2006* (WA) are not limited or affected by the terms of the Contract.

## **GCC 29 COMPANY GUARANTEE**

If, prior to or as a condition on acceptance of a Tender, the Principal required delivery of a guarantee by a company acceptable to the Principal, the Contractor must procure the provision of the guarantee by the approved company in the form of Annexure C, or on such other terms as approved by the Principal, and deliver the guarantee to the Principal.

## **GCC 30 ABORIGINAL PARTICIPATION**

- (a) The Contractor must meet the Aboriginal Participation strategy set out in Tender Schedule G.
- (b) The Principal may, at its absolute discretion, use the Contractor’s performance in meeting the Aboriginal Employment and Training requirements of this Contract when evaluating future tenders submitted by the Contractor.

## **GCC 31 INDUSTRIAL MATTERS AND EMPLOYMENT INFORMATION AUDIT**

### **31.1 Industrial Matters**

In this clause, the terms “Contractor Personnel”, “Subcontract” and “Subcontractor” have the meaning given in GCC 31.2.

- (a) The Contractor must:
  - (i) without limiting GCC 32, ensure, and must procure that its Subcontractors (in respect of each Subcontractor’s officer, employees and agents) ensure, that the requirements of all relevant industrial awards, industrial agreements and registered workplace agreements are observed, including that the remuneration and terms of employment of all Contractor Personnel for the duration of the Contract are consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry; and



- (ii) comply with, and ensure that the Contractor Personnel comply with, all Legislative Requirements relating to employment or industrial matters and relations (including the *Fair Work Act 2009* (Cth) and the *Industrial Relations Act 1979* (WA)) and orders of competent courts or industrial tribunals.
- (b) The Contractor (or a Subcontractor if applicable) is responsible for the conduct of all proceedings, conferences, negotiations and dealings with unions and union representatives, regarding industrial matters arising in relation to the performance of the work under the Contract but the Contractor must keep the Superintendent fully informed of all such matters.
- (c) The Contractor must immediately notify the Superintendent if a strike or any other form of industrial unrest occurs or is reasonably likely to occur in relation to:
  - (i) Contractor Personnel; or
  - (ii) personnel that may reasonably be engaged or have been planned to be engaged as Contractor Personnel,
 and provide full details if requested.
- (d) The Contractor must ensure that each Subcontract contains provisions equivalent to this clause.
- (e) Failure by the Contractor to comply with GCC 31.1(a) is a substantial breach of the Contract for the purposes of GCC 20.1(b).

### 31.2 Employment Information Audit

- (a) In this GCC 31.2:

**Contractor Personnel** means all officers, employees and agents of the Contractor, all Subcontractors and all officers, employees and agents of Subcontractors, engaged in relation to the Contract or the work under the Contract;

**Employment Auditor** means any person or Government Agency authorised by the Principal to audit employment or industrial relations practices (including terms of employment);

**Employment Information** means records and information of any kind and in any form (including verbal) pertaining to employees or the terms and conditions of their employment, or payroll, but excluding any sensitive information (as that term is defined in the *Privacy Act 1988* (Cth));

**Government Agency** includes any government or governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, Ministerial Body, agency or entity; and

**Subcontractor** means a subcontractor (at any tier) of the Contractor in connection with this Contract or the work under the Contract, including contracts for works, performance of services and for the supply of goods or materials and **Subcontract** has an equivalent meaning.

- (b) Subject to GCC 31.2(c), the Contractor:
  - (i) must on request (at its cost), and must ensure that its Subcontractors, give every assistance to, and make the Employment Information available to, an Employment Auditor for the audit of the Contractor's or any Subcontractor's employment and industrial relations practices (including terms of employment); and
  - (ii) acknowledges and agrees, and shall ensure that each Subcontractor acknowledges and agrees, that an Employment Auditor may, at any time:



- (A) inspect, audit, use and copy the Employment Information for the purposes of such audit;
- (B) maintain, reproduce, destroy or transfer the Employment Information for the purpose of complying with the Employment Auditor's obligations at law; and
- (C) refer any failure by the Contractor or any Subcontractor to comply with the requirements in GCC 31.1(a) (or the equivalent Subcontract clause) to any Government Agency having an oversight role in respect to employment, payroll tax or industrial relations matters,

and the Contractor must, and must ensure that Subcontractors, provide each Employment Auditor with proper access to the Employment Information, Contractor Personnel and facilities to facilitate such an audit, including allowing the person to communicate directly with (and provide Employment Information to) Contractor Personnel.

- (c) The Contractor's obligations under GCC 31.2(b) apply to the extent permitted by law. The Contractor must, if subject to the *Privacy Act 1988* (Cth), use (and must ensure that each Subcontractor uses) all reasonable endeavours to provide Contractor Personnel with prior notice of the use and disclosure of personal information contemplated by GCC 31.2(b) and seek the consent of Contractor Personnel to such use and disclosure.
- (d) Without limiting the Principal's rights under GCC 20, the Contractor must, and must ensure that each Subcontractor, promptly rectifies any failure to comply with the requirements of GCC 31.1(a) (or the equivalent Subcontract clause) notified to the Contractor.
- (e) The Contractor must ensure that each Subcontract contains provisions reasonably necessary to enable the Contractor to fulfil its obligations under this clause, including a requirement for each Subcontractor to, on request from the ultimate recipient of the work under the Contract, give every assistance to and make Employment Information available to the Employment Auditor.
- (f) This GCC 31.2 survives expiry or termination of the Contract.

## **GCC 32 TRAFFIC MANAGEMENT EMPLOYMENT REQUIREMENTS**

### **32.1 Definitions**

- (a) In addition to any other definition detailed in the Contract, the following definitions apply in this GCC 32. For the purposes on this GCC 32 (only), in the event of any discrepancies between other areas of the Contract and the definitions included in this GCC 32.1, the contents of this this GCC 32.1 take precedence.

**AGTTM** means Austroads Guide to Temporary Traffic Management.

**Award** means the *Building and Construction General On-site Award 2020*, as may be amended or replaced from time to time.

**Base Rate** has the same meaning as 'base rate of pay' in the *Fair Work Act 2009* (Cth).

**Category A Person** means a person required to have a Traffic Controller and/or Basic Worksite Traffic Management accreditation pursuant to the Code of Practice or as may otherwise be required by the Contract, but excluding a Category B Person, Category C Person or Category D Person.

**Category B Person** means a person required to have a Worksite Traffic Management and/or Truck Mounted Attenuator Operator accreditation pursuant to the Code of Practice or as may otherwise be required by the Contract.

**Category C Person** means a person required to have an Advanced Worksite Traffic Management accreditation pursuant to the Code of Practice or as may otherwise be required by the Contract, but excluding a Category D Person.

**Category D Person** means a person required to have a Roadworks Traffic Manager accreditation pursuant to the Code of Practice or as may otherwise be required by the Contract.

**Code of Practice** means Western Australia's Traffic Management for Works on Roads Code of Practice as may be amended from time to time (available on the Main Roads website), and reference to the Code of Practice includes all requirements within the Code of Practice including compliance with relevant parts of AGTTM and AS1742.3 – Traffic Control for Roadworks.

**Enterprise Agreement** means an enterprise agreement approved in accordance with the *Fair Work Act 2009* (Cth) and which applies to the Contractor and its employees when undertaking Traffic Management Activity or which applies to any subcontractor and its employees when undertaking Traffic Management Activity.

**Minimum Rate** means:

- (i) for a Category A Person undertaking a Traffic Management Activity; \$35.67;
- (ii) for a Category B Person, Category C Person or Category D Person undertaking a Traffic Management Activity; \$37.15.

**Other Award** means any modern award, other than the Award, which applies to the Contractor and its employees when undertaking Traffic Management Activity or which applies to any subcontractor and its employees when undertaking Traffic Management Activity.

**Related Bodies Corporate** has the meaning given in section 50 of the *Corporations Act 2001* (Cth).

**Relevant Person** means all persons that are a Category A Person, Category B Person, Category C Person or Category D Person.

**Scheme** means the State Road Traffic Management Company Registration Scheme, details of which are available on the Main Roads website.

**Traffic Management Activity** means any work under the Contract that requires the person undertaking such work to have a Traffic Controller, Basic Worksite Traffic Management, Worksite Traffic Management, Advanced Worksite Traffic Management, Roadworks Traffic Manager and/or Truck Mounted Attenuator Operator accreditation pursuant to the Code of Practice or as otherwise be required in accordance with the Contract.

## **32.2 General**

- (a) The Contractor must ensure that while a Relevant Person is undertaking a Traffic Management Activity they are paid a Base Rate that is not less than the Minimum Rate, other than where an Enterprise Agreement applies.
- (b) Where an Enterprise Agreement applies, the Contractor will:
  - (i) ensure that a Relevant Person is not paid less than the minimum rate of pay required by the applicable Enterprise Agreement; and
  - (ii) ensure that while a Relevant Person is undertaking a Traffic Management Activity the amount paid to a Relevant Person includes a Base Rate that is not less than the Minimum Rate; and

- (iii) if requested by the Principal, provide calculations to establish to the Principal's reasonable satisfaction that the amount paid to a Relevant Person provide for a Base Rate which is not less than the Minimum Rate.
- (c) The Contractor must ensure that while a Relevant Person is undertaking a Traffic Management Activity they have terms and conditions of employment that meet or exceed those detailed in the Award.
- (d) If meeting or exceeding the terms and conditions detailed in the Award would mean the Contractor or a subcontractor could not comply with the terms of an applicable Enterprise Agreement or Other Award, the Contractor is not required to ensure that the terms and conditions meet or exceed those in the Award but only to the extent of the non-compliance.
- (e) If a Relevant Person receives an annualised salary, the Contractor must ensure that while a Relevant Person is undertaking a Traffic Management Activity they are no worse off than had they received a Base Rate greater than or equal to the Minimum Rate and received the relevant loadings, allowances, penalty rates and overtime as prescribed by the Award. If requested by the Principal, the Contractor will provide calculations to establish this to the Principal's reasonable satisfaction.
- (f) All Category A Persons or Category B Persons undertaking a Traffic Management Activity must be either:
  - (i) directly employed as an employee of the Contractor; or
  - (ii) directly employed as an employee of a company, who at the time that the relevant work under the Contract is undertaken, has a current registration under the Scheme.
- (g) For the avoidance of doubt, nothing in the above GCC 32.2(f) in any way alters the requirements of the Scheme.
- (h) The Contractor must ensure that any Relevant Person undertaking Traffic Management Activity at a location that requires the person to reside at a location other than their base location of employment receives either:
  - (i) reasonable allowances; or
  - (ii) has no out of pocket expenses,
 relating to the provision of a reasonable level of meals and/or accommodation associated with such location.
- (i) The Principal, Superintendent or anyone authorised pursuant to GCC 31.2 may, without notice, audit the Contractor or any subcontractor (at any tier) engaged to perform a Traffic Management Activity to verify or otherwise compliance with any aspect of this GCC 32.
- (j) Any non-compliance identified pursuant to GCC 32.2(i) or otherwise reasonably determined by the Principal, Superintendent or anyone authorised pursuant to GCC 31.2 constitutes a substantial breach of contract for the purposes of GCC 20.1(b).
- (k) The Contractor must include provisions in any of its relevant subcontracts to give effect of this GCC 32.
- (l) The Contractor is not required to comply with this GCC 32 to the extent that it requires the Contractor to take any action which would breach any laws.
- (m) Notwithstanding GCC 32.2(l), if the Contractor believes that complying with the requirements of this GCC 32 would cause the Contractor to breach any laws, the Contractor must immediately notify the Principal of:
  - (i) the extent to which it cannot comply; and

- (ii) information pertaining to why it cannot comply.

### **32.3 Portable Long Service Leave**

- (a) The Contractor acknowledges the terms of the *Construction Industry Portable Paid Long Service Leave Act 1985* (WA) and the *Construction Industry Portable Paid Long Service Leave Regulations 1986* (WA) (in this GCC 32.3, collectively Portable Long Service Leave Legislation).
- (b) To the extent that the Portable Long Service Leave Legislation is applicable to a Relevant Person, the Contractor must ensure that it fully complies with the Portable Long Service Leave Legislation in relation to the Relevant Person (this includes making any contributions or payments prescribed by the Portable Long Service Leave Legislation).

<b>THE FOLLOWING CONDITIONS OF CONTRACT APPLY IF STATED IN ANNEXURE A</b>
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### **GCC 33 PERIOD CONTRACT**

<i>If Annexure A states that a period contract applies, then this GCC 33 <b>and</b> GCC 35 applies, otherwise this clause is not applicable to the Contract.</i>
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- (a) The initial term of this period contract:
  - (i) commences on the date set out in the Acceptance Letter or, if not set out in the Acceptance Letter, the date of the Acceptance Letter; and
  - (ii) continues for the period specified in the Acceptance Letter, or if not specified in the Acceptance Letter, the period stated in Annexure A as the 'Initial Term'.
- (b) The Principal may, in its absolute discretion:
  - (i) by written notice to the Contractor, extend the term of this period contract by the total period stated in Annexure A; or
  - (ii) by written notices to the Contractor from time to time, progressively extend the term of this period contract by periods determined by the Principal which will, in aggregate, not exceed the total period stated in Annexure A.

### **GCC 34 PANEL CONTRACT**

<i>If Annexure A states that a panel contract applies, then this GCC 34 <b>and</b> GCC 35 applies, otherwise this clause is not applicable to the Contract.</i>
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#### **34.1 Establishing a Panel**

- (a) The Principal has, or intends to, enter into contracts with a number of contractors to deliver works of the nature contemplated by this Contract. This Contract will form part of a panel arrangement comprising more than one contractor (including the Contractor) collectively the 'Panel Members'.
- (b) The Principal reserves the right to add Panel Members at any time during the term of the panel.

#### **34.2 Removal or Suspension as Panel Member**

- (a) In addition to the Principal's rights under GCC 20, the Principal may by notice to the Contractor, remove the Contractor as a Panel Member and terminate the Contract if:
  - (i) a trend exists of the Contractor failing to submit tenders in response to Work Packages;
  - (ii) a trend exists of the Contractor submitting non-competitive tenders in response to Work Packages;
  - (iii) the management plans required in GCC 9.3 are not prepared and approved within a reasonable time.
  - (iv) the Contractor fails to complete Work Packages to the quality, or within the time, required;
  - (v) the Contractor becomes a debarred supplier as defined in section 32 of the *Procurement Act 2020*; and/or
  - (vi) the Contractor intimates that it is unwilling or unable to undertake Works, and from the date specified in the notice, or if no date is specified, the date of the notice, the Contract is terminated.

- (b) The Principal may, by notice to the Contractor, suspend the Contractor as a Panel Member and exclude the Contractor from submitting a Tender for any Work Package during the period of suspension if the Contractor has:
  - (i) substantially delayed the commencement of a Work Package;
  - (ii) failed to execute the Works at a rate of progress satisfactory to the Superintendent causing a substantial delay;
  - (iii) refused to execute a significant instruction of the Superintendent;
  - (iv) failed to complete a Work Package by the date stated for completion (or such extended time as the Superintendent may grant) causing a substantial delay; and/or
  - (v) intimated that it is unwilling or unable to undertake or complete the Works,
- (c) A notice under paragraph (b) may:
  - (i) specify the suspension period; or
  - (ii) detail the requirements to be met by the Contractor in order that the Principal may consider ending the suspension, in which case the suspension will end on notice from the Principal to the Contractor.
- (d) The Principal may, at any time in its absolute discretion, notify a Contractor that a suspension under paragraph (b) has ended, regardless of any period or conditions notified to the Contractor under paragraph (c).

### **34.3 Allocation of Panel Work Orders**

- (a) The allocation of Work Orders between the Contractor and other Panel Members may be undertaken as follows:
  - (i) Only those Panel Members that, at the relevant time, have not been removed or suspended from the panel are eligible to receive a Work Package or a Work Order.
  - (ii) The Superintendent may award a Work Package as a Work Order to a Panel Member selected by the Superintendent without a Tender if the Work Package is:
    - (A) urgent; or
    - (B) covered by rates and prices in the Price Schedule.
  - (iii) The Superintendent may issue a Work Package to one or more Panel Members (up to the maximum number of Panel Members nominated in Annexure A) for submission of Tenders, in which case GCC 35.3(b) applies.
- (b) The issuance of Work Packages for Tender and allocation of Work Orders may be adjusted throughout the term of the panel based on each Panel Member's performance.
- (c) The Principal does not make any representation to the Contractor about the distribution of Work Orders or Work Packages between Panel Members.

## **GCC 35 WORK ORDERS**

*If Annexure A states that Work Orders will be used, that a period contract applies or that a panel contract applies, then this GCC 35 applies, otherwise this clause is not applicable to the Contract.*

### **35.1 Work Orders**

- (a) If the Superintendent issues the Contractor a Work Order, the Contractor must undertake and complete the Work Order in accordance with the Contract.

- (b) The obligations of a Work Order survive the termination or expiry of the Contract unless the termination or expiry is in respect of that Work Order.

### **35.2 No Payments under Contract or Exclusivity**

- (a) Unless specifically stated otherwise, no payment will arise under the Contract unless a Work Order is issued to the Contractor.
- (b) This Contract does not grant the Contractor an exclusive right to perform the Works and the Principal may engage a third party to perform the Works.
- (c) The Principal is under no obligation to, and no representation has been made:
  - (i) that it will procure or seek to procure any, or any particular, Works or Work Package from the Contractor; or
  - (ii) that the Contractor will perform any minimum value of Works or Work Packages.

### **35.3 Issuing Work Packages and Work Orders**

- (a) The Superintendent may from time-to-time issue the Contractor:
  - (i) a Work Order describing the Work Package awarded to the Contractor; or
  - (ii) a Work Package requesting a Tender from the Contractor to undertake the Work Package.
- (b) If the Superintendent issues a Work Package requesting a Tender:
  - (i) the Tender process for the Work Package will be carried out in accordance with the Special Conditions of Tendering provided with the Tender Submission Document for the Contract;
  - (ii) the Contractor must:
    - (A) respond to the Work Package with its Tender in accordance with the terms of, and within the closing time stated in, the Work Package;
    - (B) complete the matters required for the proposed Work Order; and
    - (C) complete its Tender so that it is capable of being accepted without further discussion or clarification;
  - (iii) the Principal is under no obligation to clarify a Tender, and may reject any Tender that is not complete or that does not conform to the requirements of the Contract or Work Package;
  - (iv) the Principal has no obligation to accept the Contractor's Tender;
  - (v) the Principal may seek further clarification and/or amendment of the Tender sufficient to complete an intended Work Order; and
  - (vi) if the Principal accepts the Contractor's Tender, as may be clarified or amended, the terms of the Tender will be incorporated into a Work Order issued to the Contractor.

## **GCC 36 CONTRACT AMENDMENTS**

*If Annexure A states that contract amendments may apply, then this GCC 36 applies, otherwise this clause is not applicable to the Contract.*

### **36.1 General**

- (a) The Principal reserves the right to, by written notice to the Contractor, amend the Contract at any time. Such amendment(s) may:
  - (i) include the deletion of any existing condition or requirement;



- (ii) include the alteration of any existing condition or requirement;
  - (iii) include the addition of any new condition or requirement; and
  - (iv) relate to the conditions of the Contract, conditions of the Tender process, the requirements of the Tender, Specifications, drawings or any other part of the Contract, but will not fundamentally alter the scope of the Contract.
- (b) Unless otherwise specifically stated in the notice under paragraph (a), the notice does not replace or otherwise supersede any previous notice under paragraph (a).
  - (c) A notice under paragraph (a) must include details of the amendments being made to the Contract, a date from when the amendments are effective and whether the amendments apply to Works already awarded under a Work Order.

### 36.2 Awarded Work

If a notice under GCC 36.1 applies to Works awarded under a Work Order prior to the effective date of the notice, the Superintendent shall direct a variation under GCC 13.

### 36.3 Future Work

For Works that have not yet been awarded on the effective date of the notice under GCC 36.1, the Contractor acknowledges that:

- (a) by submitting a Tender for the Works, the Contractor accepts the requirements of the notice (including the Works required) are now part of the Contract;
- (b) all costs associated with implementing the requirements of the notice have been allowed for in the Contract Sum; and
- (c) the Contractor shall not make any claim to recover costs associated with the notice.

## GCC 37 HOURLY RATE BASED ARRANGEMENTS

*If Annexure A states that hourly rate based arrangements apply, then this GCC 37 applies, otherwise this clause is not applicable to the Contract.*

- (a) In this clause:

**Day** in relation to plant is to be measured as one calendar day, if the item of plant is functioning and available for use for the Works for the entirety of that day.

**Day Shift** means working a shift predominantly between 6am and 6pm on the same day and is commensurate with working predominantly within daytime hours. This applies only to a day that is a Business Day.

**Dedicated** means a type of person or plant stated as dedicated in the Price Schedule that is engaged by the Contractor for the exclusive use of the Principal on a full time basis.

**Hour** is to be measured to include any portion of an hour, and the number of hours worked as Time Worked by a worker.

**Overtime** means working an extra Hour at the end of a Day Shift having already worked more than 8 Hours during that Day Shift, and excludes any time worked as a Night Shift.

**Night Shift** means working a shift predominantly between 6pm and 6am of the next day.

**Public Holiday Shift** means working a shift that commences after 6am on the applicable public holiday that applies in Perth, Western Australia.

**Timesheet Person** means a person (whether an employee or agent of the Principal or the Contractor) that is assigned to a particular worker, who is approved by the Superintendent.

The Timesheet Person will be a person capable of ascertaining the individual's working hours.

**Timesheet System** means a computerised integrated timesheet system approved by the Superintendent that is readily accessible to all personnel and all Timesheet Persons. The system will allow each worker to record the working details and allow the relevant Timesheet Person to approve or otherwise reject the timesheet for correction. A Timesheet System may be imposed by the Principal.

**Time Worked** means durations of time approved by the Superintendent based on a timesheet completed under a Timesheet System by the associated worker and accurately represents time actually worked on the Works by that worker. Time Worked excludes:

- (i) meal breaks, leave and other absences;
  - (ii) travel time between work and home (or other temporary place of residence); and
  - (iii) travel time between a worksite which is part of the Works and another worksite which is not part of the Works.
- (b) If the Price Schedule provides for the payment of a worker under an hourly rate arrangement (per Hour) and/or for the payment of plant under a daily rate arrangement (per Day) then the following provisions apply to the person carrying out that worker role.

### **37.2 Worker Suitability**

- (a) The person engaged to perform the Works must:
- (i) be suitably skilled and reasonably fit to undertake the work;
  - (ii) be suitably computer literate to operate the systems assigned within a crew, or other systems reasonably expected from the particular worker;
  - (iii) have the required licenses and other industry certifications current at the time (including Work Safely in the Construction Industry (White Card) and suitable licences and competency verifications for personnel operating plant);
  - (iv) be free from influence of alcohol and illicit drugs whilst rostered to perform work and submit to random and other testing for compliance;
  - (v) behave in a manner commensurate with reasonable workplace policy and the reputation of a reliable government road agency, including through any communication with the general public;
  - (vi) perform the work safely, have and wear appropriate personal protective equipment, not be fatigued and be sufficiently hydrated;
  - (vii) perform the work with due expedition and without undue distraction from mobile telephones; and
  - (viii) meet the requirements of all applicable Government Agency orders and Legislative Requirements.
- (b) Any person who, in the reasonable opinion of the Superintendent, is not performing or complying with the above listed requirements, will, on request by the Superintendent, be replaced by the Contractor.

### **37.3 Approval of the Person**

The Contractor must provide details of each person, and each person must be approved by the Superintendent prior to commencing any work. An approved person must not be replaced by the Contractor without the prior approval of the Superintendent.

### **37.4 Time Worked**

The person will record Time Worked under a Timesheet System and have the times approved by a Timesheet Person. The resulting approved timesheet will form part of the claim for payment.

### **37.5 Timesheets**

Timesheets must be completed and submitted for approval at intervals not greater than a fortnight. Timesheets must include the following:

- (a) name of person;
- (b) whether the person is an Aboriginal Person (being a person of Aboriginal or Torres Strait Islander descent, who identifies as such and is accepted as such by the community in which he or she lives or has lived) or not;
- (c) dates of the days worked;
- (d) start and finish times for each day worked as Time Worked;
- (e) start and finish times relating to meal breaks for each day worked;
- (f) start and finish times for leave or other absences for each day if partly worked;
- (g) allocation of Time Worked against Project Numbers and Cost Codes provided by the Principal to which the particular work relates.

### **37.6 Dedicated Personnel or Plant Item**

- (a) If the Price Schedule in relation to a type of worker, or a type of plant, states that the worker or plant is Dedicated, then the following provisions also apply to that person or item of plant.
- (b) The person or plant item will be dedicated solely to perform the Works and any other work directed by the Superintendent. The person or plant item will not be available for the Contractor's use outside of this Contract (or for the use of any other person or company).
- (c) For the purposes of the Works, the person will be embedded in a single reporting structure extending down from the Principal's personnel, and will generally conform to cascaded work requirements at the direction of their immediate supervisor, where consistent with the Contract.
- (d) The Contractor shall ensure that a person who takes extended leave (generally absences of greater than 1 month) are backfilled with a suitable replacement person approved by the Superintendent, unless otherwise waived by the Superintendent for the particular absence.

### **37.7 Indirect Costs**

Any indirect personnel for administration and support activities (including recruitment and disengagement, behaviour and other management, payroll, WHS and injury management, plant management, invoicing and payment of accounts, purchasing, supervision and management of the person or Contract) associated with a worker or item of plant is the responsibility of the Contractor, and shall not be paid for separately. The person engaged as a worker will not be used by the Contractor for these activities.

### **37.8 Communications**

Except during any substantial leave, the person must operate a working mobile phone during their term of engagement under the Contract, regardless of whether they are rostered to work or not. A list of phone numbers for such persons must be provided to the Superintendent, and always be kept current. This shall be included in the rate for the person.

## **GCC 38 ADJUSTMENT FOR RISE AND FALL IN COSTS**

*If Annexure A states that rise and fall applies, then this GCC 38 applies, otherwise this clause is not applicable to the Contract.*

### **38.1 General**

Rise and fall in the cost of the work under the Contract will be accommodated by an adjustment of the Rates only where:

- (a) the components of the work under the Contract are expressly detailed at GCC (a); and
- (b) for a rise in costs, the Contractor has complied with GCC 38.6.2 and GCC 38.6.3.

### **38.2 Definitions**

The following definitions apply to this GCC 38:

#### **Pricing Terms**

**Current Rate (CR)** means the Rate applicable for the calendar month that the relevant work was undertaken, following the application of any applicable Rise and Fall.

**Pre-Tender Date** means the date that is 14 days prior to the date of submission of the Tender.

**Rate** means rate within a Schedule of Rates, price within a Bill of Quantities or new rate or price agreed or established under GCC 13, as the case may be.

**Tendered Rate (TR)** means the Rate submitted by the Contractor in its Tender or, where a Rate is added after the date of submission of the Tender that was determined using current prices, the value calculated by applying GCC 38.5(b).

#### **Work Types**

- (a) The following components of the work under the Contract are, provided GCC (b) does not apply, subject to adjustment for rise and fall in costs in accordance with GCC 38.3:

**Asphalt Supply** means any component of the work under the Contract that comprises the supply of asphalt or microsurfacing (bituminous slurry), but excluding Asphalt Work.

**Asphalt Work** means any component of the work under the Contract that comprises both the supply and construction (laying) of asphalt or microsurfacing (bituminous slurry).

**Bituminous Products Supply** means any component of the work under the Contract that comprises the supply of any bitumen used for manufacturing of cutback bitumen, polymer modified bitumen, multigrade bitumen or bitumen emulsion, but excluding Bituminous Sealing (Spray Seal) Work.

**Bituminous Sealing (Spray Seal) Work** means any component of the work under the Contract that comprises both the supply and construction of spray bituminous sealing, including primes, primerseals, bitumen seals, emulsion seals, polymer modified binder seals, geotextile reinforced seals, bridge deck seals and tack coats (except where the tack coat is included in the Rate for Asphalt Work).

**Road Work** means any component of the work under the Contract that is not Asphalt Supply, Asphalt Work, Bituminous Products Supply, Bituminous Sealing (Spray Seal) Work or Structure Work.

**Structure Work** means any component of the work under the Contract that is within 'Series 800 – Bridges and Major Structures' of the Schedule of Rates or Bill of Quantities.

- (b) Any component of the work under the Contract where the Rate:
- (i) is derived from actual costs or percentage mark-ups, extra overs or similar applied to actual costs; or
  - (ii) relates to liquidated damages or incentive payments for achievement of performance targets, outcomes or similar,
- is not subject to adjustment for rise and fall in costs, regardless of whether it is detailed in GCC (a).

### **Bitumen Index**

**Bitumen Index (BI)** means the straight average of the major Western Australian bitumen suppliers' Monthly Gate List Prices (Published List Selling Price) for bitumen for Western Australia, as verified by the Principal. The Principal will from time to time determine the number of and composition of the major Western Australian bitumen suppliers.

**Base Bitumen Index (BIb)** means the Bitumen Index applicable to the calendar month that the Pre-Tender Date falls in.

**Current Bitumen Index (BIc)** means the Bitumen Index applicable at the date that the relevant work was undertaken or, where the work was undertaken after the Date for Practical Completion, the Bitumen Index applicable at the Date for Practical Completion.

### **Diesel Index**

**Diesel Index (DI)** is calculated by dividing the sum of all the daily Diesel Terminal Gate Prices (Wholesale) for Perth (published by the Australian Institute of Petroleum [[www.aip.com.au](http://www.aip.com.au)]) for the calendar month by the total number of published days for the calendar month. The result of this calculation will be rounded to one decimal place, in accordance with AS 2706 – 2003.

**Base Diesel Index (DIb)** means the Diesel Index applicable to the calendar month that the Pre-Tender Date falls in.

**Current Diesel Index (DIc)** means the Diesel Index applicable at the date that the relevant work was undertaken or, where the work was undertaken after the Date for Practical Completion, the Diesel Index applicable at the Date for Practical Completion.

### **Road and Bridge Construction Index**

**Road and Bridge Construction Index (RBCI)** means the road and bridge construction (3101) index for output of the Construction Industries for Western Australia, of the Producer Price Indexes, Catalogue No. 6427.0, Table 17 (Index Reference Period 2011-2012 = 100), published by the Australian Bureau of Statistics at [www.abs.gov.au](http://www.abs.gov.au).

**Base Road and Bridge Construction Index (RBCIb)** means the latest Road and Bridge Construction Index published on the Australian Bureau of Statistics website prior to the Pre-Tender Date.

**Current Road and Bridge Construction Index (RBCIc)** means the latest Road and Bridge Construction Index that is published on the Australian Bureau of Statistics website on the last day of the month in which the relevant work was undertaken or, where the work was undertaken after the Date for Practical Completion, the latest Road and Bridge Construction Index published at the Date for Practical Completion.

### 38.3 Calculation of the rise and fall adjustment

The Superintendent will undertake the calculation detailed in this GCC 38.3 when issuing a payment certificate under GCC 19.2 or Final Certificate under GCC 15.

#### 38.3.1 Asphalt Supply

Any Asphalt Supply Rate must be adjusted utilising the following formula:

$$CR = TR \times \left( 1 + 0.7 \times \left( \frac{RBCIc - RBCIb}{RBCIb} \right) + 0.25 \times \left( \frac{BIc - BIb}{BIb} \right) \right)$$

#### 38.3.2 Asphalt Work

Any Asphalt Work Rate must be adjusted utilising the following formula:

$$CR = TR \times \left( 1 + 0.8 \times \left( \frac{RBCIc - RBCIb}{RBCIb} \right) + 0.15 \times \left( \frac{BIc - BIb}{BIb} \right) \right)$$

#### 38.3.3 Bituminous Products Supply

Any Bituminous Products Supply Rate must be adjusted utilising the following formula:

$$CR = TR \times \left( 1 + 0.95 \times \left( \frac{BIc - BIb}{BIb} \right) \right)$$

#### 38.3.4 Bituminous Sealing (Spray Seal) Work

Any Bituminous Sealing (Spray Seal) Work Rate must be adjusted utilising the following formula:

$$CR = TR \times \left( 1 + 0.61 \times \left( \frac{RBCIc - RBCIb}{RBCIb} \right) + 0.34 \times \left( \frac{BIc - BIb}{BIb} \right) \right)$$

#### 38.3.5 Road Work

Any Road Work Rate must be adjusted utilising the following formula:

$$CR = TR \times \left( 1 + 0.9 \times \left( \frac{RBCIc - RBCIb}{RBCIb} \right) + 0.05 \times \left( \frac{DIc - DIb}{DIb} \right) \right)$$

#### 38.3.6 Structure Work

Any Structure Work Rate must be adjusted utilising the following formula:

$$CR = TR \times \left( 1 + 0.95 \times \left( \frac{RBCIc - RBCIb}{RBCIb} \right) \right)$$

### 38.4 Changes to indices

If an index in GCC 38.3 is renamed, discontinued or the basis on which an index is calculated is varied, the Superintendent will:

- (a) where an index is renamed, give a direction as soon as practicable, substituting the renamed index;
- (b) where an index is discontinued, give a direction as soon as practicable, substituting an index which will most closely correspond with the discontinued index; or
- (c) where the basis is altered, only if required, give a direction as soon as practicable, amending the relevant formulas detailed at GCC 38.3 to ensure that as far as is practicable the intention of this GCC 38 is given effect to.



### **38.5 Rates added after submission of Tender**

If a Rate is added after the date of submission of the Tender and such Rate is subject to rise and fall adjustment in accordance with GCC 38.1 and GCC 38.3 and the relevant Rate was derived on the basis of:

- (a) actual cost, this GCC 38 will not apply unless the Superintendent agrees in writing that, for convenience of administration, a process equivalent to paragraph (b) will be used; or
- (b) current prices, the Rate, once ascertained, must be deescalated from the date the Rate was ascertained to the Pre-Tender Date and, thereafter, the formulas detailed at GCC 38.3 will apply.

### **38.6 Subcontracts**

#### **38.6.1 Condition precedent**

It is condition precedent to the Contractor being entitled to be paid for a rise in costs in relation to a component of the work under the Contract that the Contractor has complied with GCC 38.6.2 and GCC 38.6.3 in relation to that component of the work under the Contract.

#### **38.6.2 Passing on Rise and Fall**

Where the Contractor enters into any subcontract relating to any work under the Contract

- (a) that involves Asphalt Supply, Asphalt Work, Bituminous Products Supply, or Bituminous Sealing (Spray Seal) Work, the subcontract must contain the same adjustment for rise and fall in costs as detailed in this GCC 38, without alteration, for that component of the work under the Contract; and
- (b) where the value of the work to be subcontracted exceeds \$100,000 and the subcontract involves Road Work or Structure Work, the subcontract must contain an adjustment for rise in costs (and at the Contractor's discretion, fall in costs) that:
  - (i) aligns to that detailed in this GCC 38 for that component of the work under the Contract; or
  - (ii) gives effect of the intent of this GCC 38 and aligns with this GCC 38 to the extent that it is reasonable to do so.

#### **38.6.3 Payments**

- (a) The Contractor must:
  - (i) with any payment claim involving work described in GCC 38.6.2; and
  - (ii) at any other time requested in writing by the Superintendent,give to the Superintendent a statutory declaration (in the form set out in Attachment 2) by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that the Contractor has complied with GCC 38.6.2.
- (b) The Contractor must, upon request at any time and from time to time:
  - (i) provide to the Superintendent documentary evidence of compliance with GCC 38.6.2; and
  - (ii) make all documentation available to the Principal or the Principal's nominated auditors, for the purpose of auditing, verifying or otherwise satisfying the Principal that the Contractor has complied with GCC 38.6.2.
- (c) The Principal may (in its absolute discretion) withhold payment of moneys due to the Contractor if the Contractor fails to comply with paragraph (a) or paragraph (b) or the



Principal reasonably believes that the Contractor has failed to comply with GCC 38.6.2, but only where the withheld amount and the reasons for withholding payment have been indicated on the payment certificate or Final Certificate issued by the Superintendent.

- (d) If the Superintendent or the Principal becomes aware that the Contractor has failed to comply with GCC 38.6.2 in relation to a component of the work under the Contract and payment for a rise in costs has been made under this GCC 38 in relation to that component, the amount paid to the Contractor to which the Contractor has no entitlement under this GCC 38 will be a debt due and payable by the Contractor to the Principal.

## **GCC 39 WESTERN AUSTRALIAN INDUSTRY PARTICIPATION STRATEGY**

*If Annexure A states that the Western Australian Industry Participation Strategy applies, then this GCC 39 applies, otherwise this clause is not applicable to the Contract.*

- (a) In this GCC 39:

**Final WAIPS Report** has the meaning given in GCC 39(c);

**JTSI** means the Department of Jobs, Tourism, Science and Innovation of Level 11, 1 William Street, Perth, Western Australia 6000;

**State** means the State of Western Australia and includes any department, agency, instrumentality or Minister, whether body corporate or otherwise;

**WAIPS** means the Western Australian Industry Participation Strategy created pursuant to section 5 of the *Western Australian Jobs Act 2017* (WA);

**WAIPS Participation Commitments** means the statements of intention, proposals, undertakings and commitments which are given or made by the Contractor in Section B of the WAIPS Participation Plan;

**WAIPS Participation Plan** means the participation plan accepted by the Principal on the date of Acceptance Letter;

**WAIPS Portal** means the Western Australia Industry Link's portal available on the JTSI website and accessed via the specific link provided in the request for tender.

- (b) The Contractor must:

- (i) in performing its obligations under the Contract, comply with the WAIPS Participation Commitments;
- (ii) not amend the WAIPS Participation Plan without the prior written approval of the Principal; and
- (iii) include in each subcontract obligations that enable the Contractor to comply with its obligations under this GCC 39; and
- (iv) ensure that the WAIPS Participation Plan is endorsed and verified as being true and correct by a person who is duly authorised by the Contractor.

- (c) No later than two months from the Date of Practical Completion, the Contractor must submit to the Principal a final WAIPS report for the whole of the works under the Contract which complies with this GCC 39(c) (**Final WAIPS Report**). The Final WAIPS Report must be:

- (i) accurate, up to date, comprehensive, sufficiently detailed and in no way misleading or deceptive;
- (ii) verified and endorsed by a duly authorised officer of the Contractor; and

- (iii) in the form of, and addressing the matters outlined in, the WAIPS Participation Plan report form which is available to complete through the WAIPS Portal.
- (d) The Contractor must:
  - (i) permit the Principal, the Principal's personnel or any other person duly authorised by the Principal, from time to time during ordinary business hours and upon notice, to inspect, verify and make copies at the Principal's expense, of all WAIPS records maintained by the Contractor for the purposes of this Contract;
  - (ii) permit the Principal, the Principal's personnel or other person authorised by the Principal, from time to time to undertake a review of the Contractor's compliance with the WAIPS Participation Commitments; and
  - (iii) ensure that the Contractor's Personnel give all reasonable assistance to any person authorised by the Principal to undertake such audit or inspection under GCC 39(d).
- (e) If the Principal requests from the Contractor information or access to documentation in connection with the WAIPS Participation Plan, the WAIPS Participation Commitments, or information or documentation in connection with the Final WAIPS Report, the Contractor must promptly comply with such a request, ensuring that the information or documentation provided is accurate, up to date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.
- (f) The Contractor authorises the Principal, the Principal's personnel and any other duly authorised representative of the Principal, to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with its WAIPS Participation Commitments.
- (g) Both the Principal and the State may use or disclose the WAIPS Participation Plan, the Final WAIPS Report or any information or documentation referred to in GCC 39 for the legitimate purposes of or relating to government or the business of government.
- (h) The Contractor acknowledges that if it fails to comply with the WAIPS Participation Commitments, the WAIPS Participation Plan or any other obligations under this GCC 39, the Principal and the State may consider suspending the Contractor from further contracting opportunities with the Principal and the State for a period determined by the Principal or the State (as applicable) in its absolute discretion.
- (i) This GCC 39 survives the expiration of the Contract.

#### **GCC 40 PRIORITY START POLICY**

*If Annexure A states that the Priority Start Policy applies, then this GCC 40 applies, otherwise this clause is not applicable to the Contract.*

- (a) In this GCC 40:

**Apprentice** means a person undertaking an approved apprenticeship that leads to a nationally recognised qualification under a registered training contract;

**Compliance Panel** means the panel responsible for reviewing requests by contractors to vary the Target Training Rate;

**Construction Apprentices and Trainees** means apprentices and trainees working in an in-scope apprenticeship or traineeship as published at [www.dtwd.wa.gov.au](http://www.dtwd.wa.gov.au);

**Construction Trades Workers** means all construction trades workers, including Apprentices and Trainees, in-scope of the Policy working on a full time, part time or casual basis, as published at [www.dtwd.wa.gov.au](http://www.dtwd.wa.gov.au);

**Policy** means the Western Australian Government's Priority Start policy, available at [www.dtwd.wa.gov.au](http://www.dtwd.wa.gov.au)

**Priority Start Report** means the Priority Start report to be submitted by the Contractor in accordance with the Policy and this clause.

**Reporting Period** means:

- (i) until the date certified in the Certificate of Practical Completion (the Date of Practical Completion), each twelve month period commencing on 1 July and ending 30 June the following year; and
- (ii) where the period between 1 July and the Date of Practical Completion is less than twelve months; the period between 1 July and the Date of Practical Completion.

**Subcontractor** means a contractor, other than the Contractor, working on the Project whose workforce includes Construction Trades Workers in-scope of the Policy. This includes all subcontractors in the supply chain working on the Project. It does not include manufacturers and suppliers of goods;

**Target Training Rate** means 5%;

**Trainee** means a person undertaking an approved traineeship that leads to a nationally recognised qualification under a registered training contract; and

**Training Rate** means the number of Construction Apprentices and Trainees as a percentage of the Construction Trades Workforce for the Contractor and all Subcontractors used for the Project. It is based on the combined Western Australian construction trades workforce of the:

- (i) Contractor;
- (ii) all Subcontractors used for the project.

The Training Rate is arrived at using the following formula:

$$\text{Training Rate \%} = \frac{\text{(a) number of construction apprentices/trainees in training in WA}}{\text{(b) number of construction trades workers (FTEs) in WA}} \} \times 100$$

- (b) The Contractor agrees to comply with the Policy and the terms contained in this clause.
- (c) Without limiting the application of the Policy, the Contractor must:
  - (i) ensure that the Target Training Rate is met in the Priority Start Report and is calculated consistently with the Policy;
  - (ii) obtain from all in-scope Subcontractors, a count of their:
    - (A) directly employed Construction Apprentices and Trainees;
    - (B) Apprentices and Trainees employed through group training organisations (GTOs) or skill hire companies; and
    - (C) Construction Trades Workers,for the purposes of complying with the Policy and any other information to discharge the Contractor's reporting obligations under this clause.
  - (iii) subject to paragraph (d), submit a Priority Start Report to the Principal reporting the Training Rate for the relevant Reporting Period no later than 30 days after the end of each Reporting Period; and
  - (iv) keep all supporting information, documents and evidence that was used to calculate the number of Construction Apprentices and Trainees and Construction Trades Workers by the Contractor and its relevant Subcontractors engaged for each

Reporting for audit purposes, for a minimum of two years following the Date of Practical Completion.

- (d) A Priority Start Report is not required to be submitted where the end of the relevant Reporting Period is less than three months after the end of the previous Reporting Period.
- (e) Each Priority Start Report must be in the form of the Head Contractor Priority Start Report – Template available at [www.dtwd.wa.gov.au](http://www.dtwd.wa.gov.au) and contain the following information:
  - (i) contract name, number and description;
  - (ii) contract award, construction commencement and estimated completion dates;
  - (iii) business name, Australian Business Number (ABN) and Australian Company Number (ACN) for the Contractor;
  - (iv) business name and ABN for all Subcontractors used for the Project;
  - (v) number of Construction Apprentices and Trainees working during the Reporting Period in Western Australia for the Contractor, and all Subcontractors used for the Project, including those on probation;
  - (vi) for those Construction Apprentices and Trainees hosted through a group training arrangement, by the Contractor and all Subcontractors, the name of the GTO or skill hire company;
  - (vii) number of Construction Trades Workers (full time equivalents) working in Western Australia during the Reporting Period for the Contractor and all Subcontractors used for the Project; and
  - (viii) estimated Training Rate.
- (f) The Target Training Rate may be varied, at the request of the Contractor and at the absolute discretion of the Compliance Panel, if the following conditions being met:
  - (i) the Contractor submits a written request (via the approved template) to the Principal for a variation of the Target Training Rate to apply for the duration of this contract. The request must clearly set out:
    - (A) the Contractor's proposed varied Target Training Rate;
    - (B) grounds for the variation with sufficient evidence to establish that:
      - (I) the Contractor undertakes a significant proportion of their overall work:
        - (1) in regional and/or remote areas; or
        - (2) on projects that do not allow Apprentices or Trainees on the worksite due to occupational health and safety risks;
      - (II) there has been a limited or no construction work undertaken during a particular stage/year of the Project; or
      - (III) there are other exceptional circumstances to justify a variation to the Target Training Rate; and
    - (C) the proposed date for the varied Target Training Rate to take effect;
  - (ii) the Compliance Panel is satisfied there are sufficient exceptional circumstances to justify the Contractor's request to vary the Target Training Rate; and
  - (iii) following approval, the Principal and the Contractor sign a written variation agreement to the Target Training Rate, including the date the variation is to take effect.

Should the request not be approved by the Compliance Panel, the Contractor may appeal the decision by lodging a written request (via the approved template) with the Principal within ten working days of notification of the decision.

- (g) The Contractor acknowledges that non-compliance with this clause is deemed a substantial breach of Contract.

#### **GCC 41 WORK HEALTH AND SAFETY ACCREDITATION SCHEME**

*If Annexure A states that the WHS Accreditation Scheme applies, then this GCC 41 applies, otherwise this clause is not applicable to the Contract.*

- (a) The Contractor must maintain accreditation under the Australian Government building and construction industry Work Health and Safety Accreditation Scheme (WHS Scheme), established by the *Federal Safety Commissioner Act 2022* (Cth) (FSC Act), while building work (as defined in section 6 of the FSC Act) is carried out.
- (b) The Contractor must comply with all conditions of WHS Scheme accreditation.
- (c) Paragraph 26(g) of the *Federal Safety Commissioner (Accreditation Scheme) Rules 2023* outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

**ATTACHMENT 2 – CLAUSE 38.6.3 STATUTORY DECLARATION**  
**WESTERN AUSTRALIA**  
**OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS ACT 2005**

I, **[insert name]**  
of **[insert address]**  
**[insert occupation]**

Sincerely declare as follows:

1. I hold the position of **[insert position title]** and am duly authorised by the Contractor to make this declaration.
2. In respect of **[insert name and number of Contract and (if applicable) Work Order]** (the Contract):
  - (a) all workers, suppliers and subcontractors have been paid all moneys due and payable to them in respect of work under the Contract;
  - (b) all subcontracts:
    - (i) that involve Asphalt Supply Asphalt Work, Bituminous Products Supply or Bituminous Sealing (Spray Seal), regardless of the subcontract value; and
    - (ii) that involve Road Work or Structure Work, where the total value of the subcontract exceeds \$100,000,  
  
contain the same adjustment for rise and fall as detailed in GCC 38 and all payments for adjustments for rise and fall in costs due to suppliers and subcontractors have been paid; and
  - (c) there has been no significant change to the Contractor's financial capacity that will have an adverse effect on the Contractor's ability to perform its obligations under the Contract;

in each case as at the date of this declaration, where terms defined in the Contract have the same meaning in this statutory declaration.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declaration Act 2005* (WA) at:

**[insert location]**

On **[insert date the declaration is being made]**

by:

*[Signature of person making the declaration]*

In the presence of

*[Signature of authorised witness]*

*[Name of authorised witness and qualification as such a witness]*

**\*Important** This Declaration must be made before any of the following persons: Academic (post-secondary institution), Accountant, Architect, Australian Consular Officer, Australian Diplomatic Officer, Bailiff, Bank manager, Chartered secretary, Chemist, Chiropractor, Company auditor or liquidator, Court officer (judge, magistrate, registrar or clerk), Defence force officer (Commissioned, Warrant or NCO with 5 years continuous service), Dentist, Doctor, Electorate officer of a member of State Parliament, Engineer, Industrial organisation secretary, Insurance broker, Justice of the Peace, Landgate officer, Lawyer, Local government CEO or deputy CEO, Local government councillor, Loss adjuster, Marriage celebrant, Member of Parliament (State or Commonwealth), Minister of religion, Nurse, Optometrist, Patent attorney, Physiotherapist, Podiatrist, Police officer, Post office manager, Psychologist, Public notary, Public servant (State or Commonwealth), Real estate agent, Settlement agent, Sheriff or deputy sheriff, Surveyor, Registered teacher, Tribunal officer, Veterinary surgeon **OR** any person before whom, under the *Statutory Declarations Act 1959* of the Commonwealth, a Statutory Declaration may be made.

As of 1 January 2006 there is no provision for Commissioners for Declarations in the State of Western Australia.